

**CITY OF GLENDALE**  
**CONSTRUCTION MANAGER AT RISK AGREEMENT**

**Project: CITY OF GLENDALE  
WATERLINE IMPROVEMENTS  
VARIOUS LOCATIONS**

**Project No.: 131424**

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## CONSTRUCTION MANAGER AT RISK AGREEMENT

This Construction Manager at Risk Agreement (this "Agreement") is made by and between the City of Glendale, an Arizona municipal corporation ("City"), and Achen-Gardner Construction, LLC (referred to herein as AGC or contractor or CMAR), an Arizona limited liability company, authorized to do business in the State of Arizona.

### RECITALS

- A. City is undertaking the design and construction of a public works project, as described in detail in **Exhibit A**, to benefit its citizens and visitors and the region generally (the "Project").
- B. City has engaged Stantec Consulting Services, Inc. to prepare design, programs, budgets, and other criteria for the project (the "Design Documents").
- C. CMAR's Statement of Qualifications ("SOQ") was submitted in response to the City's Request for Qualifications dated September 18, 2015. CMAR was selected by a qualification-based process in accordance with Title 34 of the Arizona Revised Statutes.
- D. City will engage CMAR under the terms of this Agreement to manage and be responsible for the timely and proper construction and commissioning of the fully completed and functional Project (the "Work").
- E. CMAR was retained to provide "value engineering" and "constructability" reviews of the design documents pursuant to a separate contract. Achen-Gardner Construction will therefore not be paid for suggesting additional design changes for this Project, as the City has already paid for such professional services. Any further design changes shall be performed by Achen-Gardner Construction at its own risk and own cost.

### AGREEMENT

City, subject to the terms and conditions of this Agreement, hereby engages CMAR to construct the Project. CMAR accepts this engagement as provided herein. Therefore, City and CMAR agree as follows:

1. **Definitions.** For the purposes of this Contract, the following words and terms shall have the respective meanings set forth below. All other words shall be given their ordinary and common usage, unless otherwise noted.
  - a. **"Change Order"** means a written amendment to this Agreement, executed on behalf of City and CMAR that specifies the Change, and the adjustment to the Contract Sum and/or Contract Times.
  - b. **"Construction Documents"** means those stamped and sealed documents containing all of the elements required in this Agreement and prepared by a registered design professional in connection with the Work that have been accepted by both CMAR and City and approved and released for construction by the applicable governmental permitting authorities.
  - c. **"Construction Materials"** means all fixtures, materials, and supplies provided for incorporation in the Project.
  - d. **"Project Documents"** include:
    - (A) this Agreement and any amendments,
    - (B) Design Documents,
    - (C) Construction Documents,
    - (D) any Change Orders, Change Directives, or Field Orders,
    - (E) Notice to Proceed,

- (F) Project related specifications and drawings,
  - (G) permits,
  - (H) FFE Procurement Schedules,
  - (I) provisions of the required bonds and insurance policies, and
  - (J) other documents identified in **Exhibit A**.
- e. **"Construction Services"** means all procurement and construction services of every kind and description, including all construction services, expertise, labor, materials, equipment, tools, utilities, supervision, coordination, scheduling, permitting, shop drawings, transportation, insurance, testing, inspection, procurement, installation and other facilities and services of every kind and description, and calculations incidental and required in connection therewith and as further described in **Exhibit A**.
- f. **"Excusable Delay"** means a delay that the City determines has or will cause the Project Schedule not to be met as a result of an event that is not attributable in any manner to CMAR's actions or inactions, or attributable in any manner to the actions or inactions of any entity under CMAR's control or direction, and cannot be avoided or mitigated by CMAR's best efforts. A Force Majeure, as defined in Section 6.7 herein, would constitute an Excusable Delay.
- g. **"FFE"** means the furniture, fixtures, and moveable equipment and other items of Work that are required for the completed Project. City may distinguish between furniture, fixtures, and moveable equipment that will be provided by City outside CMAR's scope and that which CMAR will provide as a part of this Agreement.
- h. **"Final Completion"** means the date when all of the following have occurred:
- (A) All punch list items have been completed to the satisfaction of the governmental permitting authority;
  - (B) A permanent certificate of occupancy has been secured;
  - (C) The Architect of Record has accepted the Project and submitted the property Certificate of Final Completion to City; and
  - (D) City has accepted the Project.
- i. **"Hazardous Substance"** means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and welfare of life or the physical environment if not used, stored or disposed of in accordance with applicable law, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances, pollutants or contaminants, including without limitation: (1) any substance or material included within the definitions of "hazardous substances," "hazardous wastes," "special wastes," "regulated substances," "Hazardous Substances," "toxic substances," "hazardous pollutants" or "toxic pollutants" in any of the Resource Conservation and Recovery Act, 42 U.S.C. § 9601, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901, the Toxic Substances Control Act, the Clean Air Act and/or the Clean Water Act, as the foregoing may be amended from time to time, or any regulations promulgated thereunder, and any analogous state, local or other governmental laws, rules or regulations; (2) any "PCBs" or "PCB items," as defined in 40 CFR § 761.3; and (3) any "asbestos," as defined in 40 CFR § 763.63.
- j. **"Subcontractor"** means any person or entity, including materialmen, that has a direct contract with CMAR to furnish any element of the Work. The prime contractor of CMAR is not a subcontractor.



- k. **"Substantial Completion"** of the Work means the date when all of the following have occurred:
    - (A) The Work is approved by City and deemed by the City to be substantially complete;
    - (B) The applicable permitting authorities have each issued its respective written approval(s) of the Work as being sufficiently complete so that it may lawfully be occupied by City for City's intended use;
    - (C) The Architect of Record has accepted the Project and submitted the property Certificate of Substantial Completion to City certifying that the work is substantially complete; and
    - (D) Subject only to specified punch list items.
  - l. **"Supplier"** means any entity, except the CMAR and a direct Subcontractor of the CMAR, that is contracted to furnish any labor, equipment, professional services, Construction Materials or other goods or services to accomplish or complete the Work required in this Agreement.
  - m. **"Vendor"** means a Subcontractor or Supplier who sells, but does not attach or install Construction Materials that are not specially manufactured or fabricated for the Project.
  - n. **"Withholding"** means the amount of each Progress Payment, Final Payment, or other amount otherwise payable to CMAR will be reduced for the reasons provided in this Agreement.
  - o. **"Work"** means that activity required for the timely, cost-effective, and proper design, engineering, construction, implementation and commission of the Project. Work includes, and is the result of, CMAR performing, furnishing, and incorporating as necessary all labor, materials, and equipment into the construction of the Project, and CMAR performing, furnishing, or making provision for the services and documents required by this Agreement, including and Project documents, which are incorporated hereto by reference.
  - p. **"Work Product"** means the documents generated by CMAR and its Supplier(s), including, but not limited to, all preliminary and completed evaluations, programs, reports, drawings, plans, operational documents or other work product in any media or form that CMAR and its Supplier(s) generate, or arrange for, in connection with the Project, together with the design of the buildings and structures embodied within them, and all items and matters included within the definition of "architectural work" as provided in 17 U.S.C. § 101.
2. **Construction Services.**
- 2.1 **CMAR Obligation.**
- (A) CMAR will furnish all Construction Services, including those further described in **Exhibit A**, that are necessary for the Project's timely and proper construction, completion, and use by City.
  - (B) Construction Services includes the completion of every improvement depicted, required by or reasonably inferable from any portion of the Project Documents.
3. **Representatives and Key Personnel.**

**3.1 CMAR Representative.**

- (A) Responsibilities. CMAR's Representative is authorized to act on CMAR's behalf and may not be discharged, replaced or have diminished responsibilities on the Project without City's prior consent, which may not be unreasonably withheld.
- (B) Address. CMAR's Representative address for Notice, as required in this Agreement, is:
- Daniel J. Spitz, P.E.  
Achen-Gardner Construction, LLC  
550 S. 79<sup>th</sup> Street  
Chandler, AZ 85226

**3.2 City's Representative.**

- (A) Designation of City Representative. City's Representative is authorized to act on City's behalf, whose address for Notice, as required in this Agreement, is:

David Beard  
City Engineer  
City of Glendale  
5850 W. Glendale Avenue, Suite 315  
Glendale, Arizona 85301

**With required copies to:**

City Attorney  
City of Glendale  
City Attorney's Office  
5850 W. Glendale Avenue, Suite 450  
Glendale, Arizona 85301

- (B) Concurrent Notices.
- (1) Except to the extent otherwise directed to CMAR in writing, all Notices to City's Representative must be given concurrently to the Project Coordinator and City Attorney.
- (2) Notices are not considered received by City's Representative until the time that it has also been received by the Project Coordinator and City Attorney.
- (C) Construction Administration Project Manager. The Construction Administration representative (the "Project Manager") with authority to act for the Construction Administration Firm for the Project whose information for Notices is:
- Tricia Cook, P.E.  
Stantec Consulting Services, Inc.  
8211 South 48<sup>th</sup> Street  
Phoenix, AZ 85044

Email: [tricia.cook@stantec.com](mailto:tricia.cook@stantec.com)

**3.3 Key Personnel.**

- (A) Employment of Key Personnel. CMAR and its Subcontractors will employ key personnel in connection with the Work, in categories of persons identified in **Exhibit B** (collectively, "Key Personnel") and each of whom will be acceptable to and approved by City.
- (B) Approval of Key Personnel.
  - (1) All personnel listed in CMAR's SOQ will be assigned to the Project and will be dedicated to performing work on the Project at not less than the frequency or amount of time identified in the SOQ.
  - (2) Prior to the commencement of the Work, CMAR must deliver to City a written proposal identifying the names, duties and titles, and attaching the resumes of each person who CMAR proposes as the Key Personnel.
  - (3) Except for those Key Personnel identified in the SOQ, City will have the right to disapprove CMAR's choice of any Key Personnel, provided City does so by giving written notice to CMAR.
  - (4) If City disapproves any of CMAR's proposed Key Personnel, CMAR must provide City with the name and qualifications of proposed alternates and the procedure will continue until a complement of Key Personnel who meet with City's approval is selected.
  - (5) Each Key Personnel will remain assigned to the Project throughout the Project's duration; and
  - (6) As long as each Key Personnel remains employed by CMAR or its Subcontractors, he or she must not be discharged, reassigned, replaced, or have his or her responsibility diminished without City's prior written consent.

#### 4. Documents.

4.1 **CMAR Documents.** CMAR represents that it has carefully examined, has had the opportunity to object to, and had the opportunity to obtain limitations to the Solicitation during the RFQ process, and fully understands this Agreement, including CMAR Documents and all other items, conditions, and things that may affect the performance of its obligations. Such items or conditions may include, but are not limited to, the nature or local field conditions of the Project Site that are observable to CMAR without intrusive inspection, or are documented in any environmental reports, surveys and other information regarding the Site that City has furnished to CMAR.

4.2 **Design Documents.** AGC has already reviewed Design Documents under a separate professional services contract with the City. Accordingly:

- (A) CMAR must consider the Design Documents in agreeing to the Guaranteed Maximum Price (as required by Section 5 of this Agreement).
- (B) CMAR hereby waives all claims, demands or requirements for extras or changes to the Work or the Guaranteed Maximum Price based on facts related to the Site that were discoverable by CMAR prior to the Effective Date of this Agreement.
- (C) CMAR will not receive any additional compensation for a change to the design documents unless such changes are necessitated by new information

or changed conditions discovered during the course of performing the work, as provided in Section 20.3 herein.

- 4.3 Work Product Formatting.** Any drawings created by CMAR, its Subcontractors, or its Supplier(s) will be generated and furnished to City in hardcopy and in freely modifiable AutoCAD format, as City may reasonably request.
- 4.4 Intellectual Property Rights Assignment.** CMAR hereby irrevocably conveys and assigns to City the exclusive Ownership of, and copyright in, any Work Product that is generated by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, together with all copyright renewals and extensions and the right to reproduce, publish, modify, and create and publish derivative works from the Work Product.
- (A) Use of Intellectual Property. CMAR warrants that it, its Subcontractors, and its Supplier(s) will not utilize any of the Work Product in connection with any other project without City's prior written consent, which may not be unreasonably withheld but which may be denied to the extent the requested use is for the other project and involves any unique or signature elements of the Project.
- (B) Non-Infringement. CMAR further warrants to City that all Work Product generated or arranged for by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, and CMAR's conveyance and assignment to City of the ownership of, and copyrights in, the Work Product and/or copyrights in them, as provided in this section, will not infringe on the copyrights or another party's contractual or proprietary interests.
- (C) CMAR will include provisions equivalent to the provision(s) contained in this Section 4 of this Agreement in each of CMAR's subcontracts and third party agreements with its Suppliers.
- 5. Guaranteed Maximum Price.** The maximum amount for completion of the Work as required by the Design Documents, as reviewed, modified and approved by CMAR, will be the Guaranteed Maximum Price ("GMP"). The GMP for the Work is \$2,766,064.66.
- 5.1 GMP Elements.** The GMP will incorporate into one amount::
- (A) All CMAR's direct and indirect costs and expenses incurred in connection with the Work, whether at the home office, Site, or elsewhere;
- (B) The cost of all construction, construction materials, engineering services, architectural services, geotechnical services, transportation costs, labor, supplies, services, equipment and other elements necessary for the Project's proper and timely completion;
- (C) All profit, home office overhead, job site overhead, wages, salaries and fringe benefits paid to supervisory and other employees and representatives;
- (D) Job trailer rental, utilities, telephone, and other related expenses;
- (E) Printing;
- (F) Long distance charges;
- (G) Deliveries;
- (H) Transportation;
- (I) Insurance, as allowed in Section 31 of this Agreement;

- (J) Bonds, as allowed in Section 31 of this Agreement;
- (K) All building permit costs and fees required by any federal, state or local governmental entity;
- (L) All federal, state and local taxes imposed on labor, construction materials, equipment and services furnished, including transaction privilege, excise, sales, use, personal property and similar taxes, as allowed in Section 7.4 of this Agreement; and
- (M) All other general and administrative expenses incurred in connection with the Work.

**5.2 Insurance and Bond Premiums.** CMAR's Reimbursable Construction Insurance and Bond Premiums are the amounts equal to the premiums CMAR is required to pay to secure:

- (A) The Builder's Risk Policy that CMAR is required to furnish with City's approval as provided in this Agreement;
- (B) The liability insurance CMAR and its Supplier(s) are required to furnish under the provisions of **Exhibit E** in connection with the Construction Services; and
- (C) CMAR's statutory payment and performance bonds as provided in Section 31.3 of this Agreement, if the premium has been included in the GMP Schedule approved in writing by City.

**5.3 Contingencies.** Any line item identified in the GMP Schedule as a contingency ("Contingency") belongs solely to City, and may not be drawn upon or reallocated by CMAR without City and Project Coordinator's prior written approval.

- (A) Draws Including a Contingency. CMAR must include with each monthly Application for Progress Payment an itemization of each draw from the Contingency (by date, payee, purpose and amount of each transfer or payment) made during the Billing Month, together with a copy of City's written approval for the draw.
- (B) Required Designation of Contingency. Unless the GMP Schedule conspicuously designates a line item as a "contingency," the GMP does not include any contingency amount of any kind or nature.

**5.4 Allowance.** There are no line item costs identified as allowances in the GMP Schedule ("Allowance Item"). Accordingly, the GMP may only be increased or decreased by a written amendment to this Agreement, signed by both of the Parties.

**5.5 Unit Priced Items.** There are no line item costs identified as a unit price item ("Unit Price Item") or extended price ("Unit Price Extension Amount") in the GMP Schedule. Accordingly, the GMP may only be modified to include a Unit Price Item or a Unit Price Extension Amount by a written amendment to this Agreement, signed by both of the Parties.

**5.6 FFE.** FFE not specified in the Construction Documents will be procured in accordance with the FFE Procurement Schedules to be developed by CMAR subject to CMAR and City's mutual agreement.

- (A) FFE Warranty. CMAR warrants to City that:
  - (1) Construction materials and equipment and FFE furnished under this Agreement will be of good quality and new unless otherwise required

or permitted by the Construction Documents and the FFE Procurement Schedules;

- (2) The construction will be free from faults and defects; and
- (3) The construction and FFE will conform to this Agreement's requirements, the Construction Documents, and the FFE Procurement Schedules.

(B) Correction of Nonconforming FFE. Construction and FFE not conforming to these requirements, including substitutions not properly approved by City, must be corrected in accordance with Section 22 and 23 of this Agreement.

(C) "FFE Procurement Schedules" means the interior design drawings and listings of specific FFE to be purchased for the Project.

**5.7 CMAR Risk.** CMAR bears the sole risk that any element of cost, overhead, or profit might cause the Guaranteed Maximum Price to be exceeded. If the GMP is exceeded, the City is not liable for such additional cost or expense unless the City agrees to such a change in an amendment to this Agreement signed by both of the Parties.

**5.8 GMP Savings.** If, upon the Work's Final Completion, the Contract Sum is less than an amount equal to the GMP, the resulting amount will belong solely to City.

**5.9 GMP Schedule.** The GMP is apportioned among the Work's various elements as provided in **Exhibit C** (the "GMP Schedule"). **Exhibit C** may be used by City as a basis for evaluating CMAR's Applications for Progress Payment. To the extent there is any inconsistency between any of the provisions in **Exhibit C**, and any of this Agreement's provisions, this Agreement's provisions govern.

## **6. Schedules.**

**6.1 Commencement Date.** The date of City's written notice to proceed ("Notice to Proceed") will be the Construction Services commencement date.

- (A) City will not issue a Notice to Proceed until City has approved the applicable Construction Documents, and all necessary Permits have been issued.
- (B) CMAR must not commence any Construction Services at the Site until City has issued a written Notice to Proceed.

**6.2 Time of the Essence.** Time is of the essence in completing the Project.

**6.3 Project Schedule.** CMAR must perform the Work in a logical and efficient manner in accordance with City's project schedule ("Project Schedule"), attached as **Exhibit D**.

(A) Initial Project Schedule. Within 15 days of the execution of this Agreement, CMAR must submit an initial Project Schedule, which will include the following:

- (1) Times (number of days or dates) for starting and completing the various stages of the Work, including milestones as specified in CMAR Documents;
- (2) A Schedule of Values; and
- (3) Construction Management Plan ("CMP").
  - (a) CMAR's CMP will include:

- (i) Project milestone dates and the Project Schedule, including the broad sequencing of the construction of the Project;
  - (ii) Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities, including underground utilities;
  - (iii) Alternate strategies for fast tracking and/or phasing the construction;
  - (iv) Number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction;
  - (v) Permitting strategy;
  - (vi) Safety and training programs;
  - (vii) Construction quality control;
  - (viii) Commissioning program;
  - (ix) Cost estimate and basis of the model; and
  - (x) A matrix summarizing each Project Team member's responsibilities and roles.
- (b) During the course of performance of the Work on this Project, CMR will add detail to its previous version of the CMP to keep it current throughout the construction phase and to take into account:
- (i) Revisions in Drawings and Specifications;
  - (ii) CMAR's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by City, Design Professional or CMAR;
  - (iii) Unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way;
  - (iv) Fast-tracking, if any, of the construction, or other chosen construction delivery methods;
  - (v) Requisite number of separate bidding documents to be advertised;
  - (vi) Status of the procurement of long-lead time equipment (if any) and/or materials; and
  - (vii) Funding issues identified by City.
- (B) Adherence to Project Schedule. CMAR must adhere to the major milestone dates of the Project Schedule at all times during the Work, unless it has

received City's prior written approval for a deviation from or modification to the major milestone dates of the Project Schedule. CMAR must not depart from the major milestone dates of the Project Schedule without prior consultation with and approval from City.

(C) Project Schedule Revision. The Project Schedule must be revised at least monthly, or at more frequent intervals as required by the conditions of the Work and Project, but each Project Schedule revision must allow for expeditious and practicable execution of the Work consistent with the Contract Times.

(1) The monthly revision will be a condition precedent to any payment otherwise due to CMAR.

(2) Each revised Project Schedule must be prepared in sufficient detail to demonstrate for each element of the work its timing, duration, and sequence, all integrated to show a logical order and reasonable critical path consistent with the Substantial Completion and Final Completion Dates.

(a) The revised Project Schedule may take into account an appropriate number of weather delays reasonably anticipatable based on experience in the area, but not less than one day per month.

(b) Each revised Project Schedule must include activities and logic for mitigating the cost and time impact of any anticipated or potential delays to any critical path elements that CMAR wishes City to consider an Excusable Delay.

(D) Weekly Progress Meeting. From the Effective Date until Final Completion, CMAR will meet with City every week (or more or less frequently, as requested by City or CMAR) to review the Work's progress.

(1) In advance of each such meeting, CMAR must provide City a written progress report in the format and detail as provided in **Exhibit D** (each a "Progress Report").

(a) The Progress report will identify:

(i) Whether the Work is on schedule in accordance with the Project Schedule; or

(ii) Whether there are anticipated or potential delays to any critical path elements in the Work's construction, then CMAR must include an analysis identifying CMAR's plan for making up or mitigating the delay.

(b) Unless a delay is identified in the Progress Report, CMAR's Progress Report will be its certification that it has not incurred any delays to the critical path elements at least to the extent that a cause for the delay can then be reasonably identified.

(2) Unless the delay is an Excusable Delay, CMAR must take all actions, at its expense, including working overtime and hiring additional personnel, to comply with such Project Schedule.



- (3) If the delay is an Excusable Delay, the Project Schedule may be modified to the extent mutually agreed upon by City and CMAR.
- (4) Notwithstanding any provision to the contrary in this Agreement, CMAR is solely responsible for the timing, sequencing, coordination, and supervision of the Work consistent with the Substantial Completion and Final Completion Dates.
- (5) City's review, acceptance or approval of a Project Schedule or Progress Report provided by CMAR is not:
  - (a) A waiver or bar to any rights or claims City may have against CMAR in the event City subsequently discovers a deficiency in such Project Schedule or Progress Report; and
  - (b) An acceptance of any delay as an Excused Delay, which may only be granted, along with any extension of time, by a Change Directive or amendment to this Agreement.

**6.4 Substantial Completion Notification.** CMAR will notify City and Project Coordinator in writing when CMAR, Architect of Record, and Engineer of Record believe that CMAR has accomplished Substantial Completion of the Project.

- (A) Incomplete Items. If City concurs the Substantial Completion has been accomplished, City, Project Coordinator, CMAR, Architect of Record, and Engineer of Record will determine whether any items remain incomplete.
- (B) Certificate of Substantial Completion. If City concurs the Substantial Completion has been accomplished, Architect of Record, and Engineer of Record will then each issue a "Certificate of Substantial Completion" to City, which will:
  - (1) Record the Substantial Completion date as determined by City;
  - (2) State each party's responsibility for security, maintenance, air conditioning, heat, utilities, damage to the Work and insurance;
  - (3) Include a list of items identified by City, CMAR, Architect of Record and Engineer of Record to be completed or corrected; and
  - (4) Fix a reasonable period of time for their inspection.
- (C) Disagreement as to Substantial Completion. Disagreements between City and CMAR regarding the Certificate of Substantial Completion will be resolved in accordance with provisions of Section 11 of this Agreement.

**6.5 Substantial Completion.** CMAR must accomplish substantial completion by **195 Calendar Days from the Notice to Proceed** (the "Substantial Completion Date").

- (A) Extensions. The Substantial Completion and Final Completion Dates ("Contract Time") may be extended for cause, or by Change Order, as provided in Section 6.7 of this Agreement.
- (B) Failure to Meet Substantial Completion Date. City will be substantially damaged if CMAR fails to accomplish Substantial Completion of the Work by the Substantial Completion Date, and it will be extremely difficult and impractical to ascertain the actual damages resulting from such delay; therefore:

- (1) CMAR will pay City liquidated damages ("Liquidated Damages") in the event of a delay.
- (2) Accordingly, if CMAR fails to accomplish Substantial Completion by the Substantial Completion Date, as it is extended in a signed writing by both parties, in accordance with this Agreement, City may assess, and CMAR must pay to City as Liquidated Damages, **\$1,070** for each day of delay until CMAR accomplishes Substantial Completion.
- (3) CMAR acknowledges that these sums:
  - (a) Will be paid as Liquidated Damages and not as a penalty;
  - (b) Are reasonable under the circumstances existing as of the Effective Date; and
  - (c) Are based on the parties' best estimate of damages City would likely suffer in the event of a delay.
- (4) CMAR must pay City any Liquidated Damages within ten (10) days after demand, or City may deduct these sums from any monies due or that may become due to CMAR under this Agreement.
- (5) City's collection of Liquidated Damages will not affect its rights to seek other remedies in law or at equity, including but not limited to exercising its rights under the Payment and Performance Bonds.

**6.6 Final Completion.** Final Completion must be accomplished by **225 calendar days from notice to proceed** (the "Final Completion Date").

- (A) Extensions. The Final Completion and Final Completion Dates may be extended for cause, by Change Order or other amendment of this Agreement, as provided in Section 6.7 below.
- (B) Failure to Meet Final Completion Date. If CMAR does not accomplish Final Completion by the Final Completion Date, as it is extended in accordance with this Agreement, City may thereafter take control of the Site, effective upon delivery of written Notice to CMAR, and City may exercise its rights under the terms of any Payment or Performance Bond, and seek any remedy in law or at equity, including engaging other contractors to complete the remaining Work, at CMAR's expense.
  - (1) City may deduct its resulting expenses plus 20% from amounts otherwise payable to CMAR.
  - (2) CMAR must pay any amounts not so deducted within ten (10) days after demand.

**6.7 Completion Dates Extension.** The Substantial Completion and Final Completion Dates may be equitably extended by a written, signed amendment to this Agreement. Causes for extending the completion dates may include:

- (A) City Delay. Any of the following (each a "City Delay") to the extent they necessarily result in unreasonable delays that are not caused or contributed to by CMAR:

- (1) City's failure to make a decision regarding a major milestone item within a reasonable time (not exceed 10 days) after written request from CMAR accompanied by all documents and other information necessary for making the decision; or
  - (2) Any material breach of this Agreement by City.
- (B) Force Majeure. The following items shall constitute a force majeure ("Force Majeure") event, provided they are not caused or contributed to by CMAR, or by any Subcontractor, Supplier or other person or entity for whom CMAR is responsible:
  - (1) Fire;
  - (2) War;
  - (3) Damage or disruption committed on behalf of any foreign interests to further international political objectives;
  - (4) Injunction in connection with litigation, governmental action;
  - (5) Severe and adverse weather conditions beyond those that can be reasonably anticipated as of the Effective Date of this Agreement.
- (C) Excusable Delay. The Substantial and Final Completion Dates may be extended by the number of days the City, in its sole discretion, determines is an Excusable Delay, as such term is defined in Section 1(g.) of this Agreement.
- (D) Mitigation of Delays. CMAR must use its best efforts to minimize any such time and cost impact of delays and must cooperate with City to mitigate the impact of any delays encountered by CMAR that would entitle it to an extension of time, even if its performance is unreasonably delayed by City.
- (E) Remedies for Delays.
  - (1) Pursuant to A.R.S. § 34-607(E), the parties agree to negotiate in good faith any increased costs incurred by CMAR for any unreasonable delay that is attributable solely to a delay caused by City; however, CMAR will not be entitled to additional funds for any increase in cost due to any type of delay.
  - (2) CMAR's sole and exclusive remedy for a Force Majeure event is an extension of time.

## 7. Compensation.

- 7.1 Contract Sum.** The City shall pay AGC a contract sum not to exceed the GMP for its performance of the Work under this Contract.

Cost Contract Sum is calculated by adding the Construction Services plus the CMAR's Fee (as defined in Section 7.2) and the amount paid for FFE Services (as defined in Section 1(h.) herein). In no event shall the Contract Sum exceed the GMP (\$2,766,064.66).

- 7.2 CMAR's Fee.** CMAR's Fee is the sole and exclusive compensation for CMAR's direct and/or indirect profit, home office overhead expense including, without limitation, home office administration, accounting, support, clerical services, insurance not specifically reimbursable under this Agreement, rent, all other direct and indirect home office expenses (including the costs specifically identified by

CMAR to recruit and relocate employees and bonuses (at a not-to-exceed amount) that are previously approved by City as reimbursable); taxes other than reimbursable payroll related taxes and any other cost or expense not specifically included within the Cost of Construction Services.

Cost Fee may not exceed 9% of the Construction Services minus Privilege Taxes and CMAR's Reimbursable Construction Insurance and Bond Premiums, as specified by Section 5.2 of this Agreement.

### **7.3 Construction Services Cost.**

- (A) Costs included in Construction Services. Construction Services Cost consists of the expenses incurred and paid by CMAR in the Project's proper and timely construction for:
- (1) Payments to City-approved Subcontractors or Supplier for the performance of the Construction Services and/or the furnishing of Construction Materials, fixtures, equipment and supplies in accordance with the provisions of their respective Subcontracts or Sub-subcontracts;
  - (2) Wages, salaries and normal fringe benefits (as approved by City), and normal employer taxes paid by CMAR thereon, of CMAR's supervisory staff and general field labor assigned to the Work, but only for the portion of time actually devoted to the Work, all subject to and as approved in writing by City, provided such costs are not included in the costs to be paid from CMAR's Fee per Section 7.2 of this Agreement;
  - (3) Elements of the Construction Services to be self-performed by CMAR with City's approval, in amounts approved by City (which will not include any mark-up for CMAR's Fee);
  - (4) Permit, licenses, connection fees, and other such fees to the extent required by any governmental entity;
  - (5) Construction Materials suitably stored on the Site with City's approval as provided in Section 12.5 of this Agreement;
  - (6) Construction equipment used on the Site by CMAR with City's approval, at rates not to exceed the lesser of:
    - (a) The prevailing rates charged by others for rental of similar equipment; or
    - (b) The purchase price of the Construction equipment less the reasonable depreciation in value of that equipment as a result of its use on the Site;
  - (7) Construction utilities, job site telephone, job trailer rental, portable toilets, dumpsters, cleanup and other job site general conditions as approved by City;
  - (8) Premiums paid by CMAR for Reimbursable Construction Insurance and Bond Premiums as provided in Section 5.2 of this Agreement, without any markup for CMAR's Fee;

- (9) Any other reasonable construction expense necessarily required for proper performance of the Work at the Site required by this Agreement as approved in writing by City; and
  - (10) Reimbursable Privilege Taxes, without any mark up for CMAR's Fee. Expenses that do not meet the criteria set forth above are not reimbursable as Costs. All discounts received by CMAR from Supplier accrue to City's benefit.
- (B) Cost Excluded from Construction Services. The Cost of the Construction Services **may not** include reimbursement for:
- (1) Any amounts for FFE Services;
  - (2) The performance of any Construction Services by CMAR's own forces or use of any equipment owned by CMAR without City's prior written approval;
  - (3) Any Construction Materials not yet incorporated in the Project or stored at the Site with City's approval, as defined in Section 12.5(A) of this Agreement;
  - (4) Payment to CMAR or a subcontractor or supplier of amounts in excess of the amounts approved by the City for CMAR's self-performed Construction Services or for such performance by a subcontractor or supplier;
  - (5) Repair or replacement of defective or nonconforming Work;
  - (6) Repair or replacement of Work damaged by the negligence or failure to perform a responsibility hereunder by CMAR or by any Supplier;
  - (7) Any interest or penalties;
  - (8) Premiums for business automobile insurance, workers compensation and employers liability insurance, and any general liability and other insurance normally carried by CMAR;
  - (9) Any legal expense incurred by CMAR;
  - (10) Any other home office expense;
  - (11) Any expense that causes the GMP, as amended, to be exceeded; or
  - (12) CMAR's Fee or any Privilege Tax(es);
  - (13) Any other expense that does not meet the criteria set forth in Section 7.3(A) of this Agreement, and
  - (14) Any costs associated with changes to the Design or Design Documents that were not required by the discovery of new information or changed conditions during the construction of the Project, as provided in Section 20.3 herein.
- (C) Schedule of Rates. City will consider approving written schedules of rates upon which CMAR may base its monthly estimated costs for purposes of Applications for Progress Payment of certain Construction Services costs, such as supervisory salaries and equipment; but only on condition that adoption of any schedule for these purposes is subject to audit and adjustment necessary to reflect the actual costs of these items to CMAR.

#### **7.4 Taxes.**

##### **(A) Reimbursement.**

- (1) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on gross receipts received by CMAR. Such payments may be made by the City if Privilege Taxes were timely paid by CMAR and are not otherwise exempt from such taxation.
- (2) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on amounts received from City for the direct costs paid by its Subcontractors for FFE. City will not reimburse CMAR for any amounts paid as and for Privilege Taxes by CMAR to its Supplier(s) or by a Supplier to another Supplier, or for any markup for profit and overhead for costs paid to Subcontractors.

##### **(B) Application.**

- (1) Each Application for Progress Payment and Application for Final Payment will separately identify that part which represents FFE.
- (2) CMAR and its Supplier(s) will not report transaction privilege or use taxes paid for FFE.
- (3) CMAR will not seek reimbursement for Privilege Taxes computed on receipts for these expenses.

##### **(C) Tax Licenses.** CMAR must take all steps necessary to obtain state and local retail tax licenses, issue exemption certificates to vendors, and otherwise perfect its right to be exempt from the payment of Privilege Tax for FFE purchases, and CMAR must require its Supplier(s) to also obtain state and retail tax licenses, issue exemption certificates to vendors, and otherwise perfect their rights to be exempt from the payment of Privilege Tax for FFE purchases.

#### **7.5 FFE Services.**

- (A) The amount to be paid to CMAR for the FFE Services will be an amount equal to the direct expenses (exclusive of any Privilege Taxes) paid by CMAR (or by a Subcontractor or Supplier) for the FFE, without markup for profit or overhead of CMAR (or of the Subcontractor or Supplier).
- (B) "FFE Services" means interior design of the Project and the procurement of the FFE.

### **8. Payments.**

#### **8.1 Cash Flow Report.**

- (A) CMAR will prepare a Cash Flow Report for projected monthly project cash flow on the form provided by City.
- (B) The Cash Flow Report will be submitted for approval prior to issuance of the Notice to Proceed, as issued in accordance with Section 6 of this Agreement.

- (C) The Cash Flow Report will be updated and submitted with each Application for Progress Payment and at any time City requests if the projected monthly project cash flow varies by more than 10% of the GMP.
- (D) The Cash Flow Report will reflect the following:
  - (1) Initially, the accumulation of month pay estimates costs will be plotted versus time in accordance with the proposed construction schedule; and
  - (2) For each update, CMAR's actual month payment versus the actual elapsed time on the Project.

**8.2 Draft Application for Progress Payment.** Based on draft applications (each a "Draft Application") followed by formal applications for progress payment (each an "Application for Progress Payment"), City will make monthly progress payments on Contract Sum account as provided in this Section. The Draft Application is for informational purposes only and its submission is not an Application for Progress Payment.

- (A) Period. The period covered by each Application for Progress Payment will be one calendar month (the "Billing Month") ending on the last day of each month.
- (B) Date for Submission. On or before the 25<sup>th</sup> day of each Billing Month, CMAR will submit to City its Draft Application, which must identify all amounts CMAR expects to invoice for the entire Billing Month.
- (C) Review Meeting. The parties will thereafter meet and make good faith efforts to reach agreement on the Draft Application by the end of the Billing Month, whereupon CMAR will formalize its Application for Progress Payment for the Billing Month, incorporating all of the agreements reached during the parties' review of the Draft Application.

**8.3 Application for Progress Payment.** Provided that CMAR has submitted its Draft Application for review as provided above, CMAR may submit its Application for Progress Payment for the Billing Month to City, no earlier than the 1st day of the month following the Billing Month.

- (A) Date for Submission. City will make a Progress Payment, subject to applicable Withholdings, to CMAR not later than 21 days after the date on which the Application for Progress Payment has been received by City, subject to this Agreement.
- (B) One Progress Payment Per Month. Unless City agrees otherwise, CMAR may submit only one Application for Progress Payment in a month and City will make only one Progress Payment in a month to CMAR.
- (C) Progress Payment Application Form. The Application for Progress Payment will be in such form as City may reasonably require, and will be accompanied by the following to City's reasonable satisfaction:
  - (1) A sworn statement of the Cost of the Work furnished during the Billing Month, together with the required form of application as City requires, properly completed so as to allocate all Construction Services and FFE Services according to the most recent City-approved GMP Schedule;

- (2) An itemized report of the Work performed during the Billing Month;
  - (3) Proof of CMAR's compliance with testing, submittals, permits, and other requirements applicable to the Work requested by City;
  - (4) Conditional and unconditional waivers and releases from CMAR and from Subcontractors, Supplier, vendors, and others relating to Work for which the Application for Progress payment is requested, or receipt of amounts for which payment has previously been made, as requested by City;
  - (5) Payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, payrolls, requisitions from Subcontractors and material suppliers, vendors receipted invoices, purchase orders, and delivery tickets;
  - (6) CMAR's monthly updated Project Schedule as provided in Section 6 of this Agreement; and
  - (7) Such other evidence substantiating the particulars of CMAR's Application for Progress Payment as may be required by City.
- (D) Complete Application Required. A complete Application for Progress Payment, including all required documentation, will be a condition precedent to CMAR's right to have the Application for Progress Payment reviewed or to receive any Progress Payments.
- (E) Incomplete or Untimely Applications. If CMAR submits an Application for Progress Payment that is incomplete or untimely, in City's reasonable judgment, CMAR must resubmit the Application for Progress Payment, with any applicable corrections.
- (F) Correspondence to Other Documents. CMAR's Application for Progress Payment must be organized so that all back-up for each line item of the Application for Payment corresponds to the most recently City-approved GMP Schedule and that the back-up for the amount requested for each item of the Construction Services, and FFE Services, and each Change Directive or Change Order is separately provided for and is available for review by City.
- (G) Certification. The Application for Progress Payment must be signed by CMAR, the Architect of Record or the Engineer of Record certifying that:
- (1) The Work has progressed to the point indicated in the Application for Progress Payment;
  - (2) That the Work is in accordance with the Project Documents;
  - (3) CMAR is entitled to payment in the amount requested; and
  - (4) Applications for Progress Payment to City will not be deemed delivered until actually received by City.
- (H) Review of Work by City. City will have the right to review the Work after receipt of CMAR's application.
- (1) Within three business days after receipt of the Application for Progress Payment, City will prepare and issue a written statement ("Deficiency Notice") specifying those items covered by the



Application for Progress Payment that are not approved and certified for payment if:

- (a) City reasonably determines that the Work actually completed is less than that represented on the Application for Progress Payment;
  - (b) The Work is defective;
  - (c) The Work does not comply with this Agreement's requirements; or
  - (d) The other grounds for withholding as provided in Section 12.3(B) below apply.
- (2) The Deficiency Notice may be given in any reasonable manner, including handwritten annotations on a copy of the Application for Progress Payment returned to CMAR.
  - (3) City may withhold such sums as are permitted pursuant to A.R.S. § 34-607 to pay the expenses City reasonably expects to incur in correcting the deficiencies so identified.
  - (4) If sums were withheld in connection with a prior Application for Progress Payment, and the associated deficiencies have been corrected, the amount so withheld may be included as part of the current Application for Progress Payment.
  - (5) City will have the right to amend any previously-given Deficiency Notice, or approval for payment, in whole or in part, based on mistake, newly-discovered information, or other grounds permitted by Law, and such amendments will apply to any Application for Progress Payment.
  - (6) However, the failure by City to specify any defect in the Work in a Deficiency Notice will not act as a waiver or otherwise prevent City from raising defect issues at any time.
- (I) Progress Payment to CMAR. Within 21 days after receipt of the properly completed Application for Progress Payment, City will pay to CMAR the entire amount set forth in the Application for Progress Payment, less any applicable Withholding and less retainage as provided in A.R.S. § 34-607(B).
  - (J) Progress Payment to Suppliers. Within 7 days after receipt of payment by City, CMAR will make payment available to its Subcontractors or Supplier entitled to payment in accordance with A.R.S. § 34-607(F).
    - (1) CMAR bears all costs and damages, without reimbursement, that arise from CMAR's failure to pay Subcontractors entitled to payment in a timely manner as provided by law, to the extent such payment has been received by CMAR from City.
    - (2) City has no obligation under this Agreement to pay or to be responsible in any way for payment to a Subcontractor or Supplier performing portions of the Work.

#### **8.4 Proof of Payment.**

- (A) Duty to Discharge Debts and Obligations. All CMAR's debts and obligations for labor, materials, equipment or fixtures incorporated into the

Project or any other element of Work, including that shown in any estimate, Application for Progress Payment, requisition or claim and upon which CMAR has received a payment must be paid or discharged by CMAR.

- (B) Proof. Receipts or vouchers showing payment or discharge must, if City so requires, be provided to City before CMAR will be entitled to receive any other or further payment under this Agreement.
- (C) Joint Check Alternative. At CMAR's election, CMAR may satisfy this requirement by requesting City issue joint checks in accordance with Section 12.4 of this Agreement.

## **9. Final Payment.**

**9.1 Application for Final Payment.** Provided that CMAR has accomplished Final Completion in a timely fashion and to the City's satisfaction, CMAR may submit an application for final payment ("Application for Final Payment"); however, neither final payment nor amounts retained, if any, will be due until:

- (A) CMAR submits to City an application for final payment with all required documentations in accordance with Section 9.2 below; and
- (B) City has thereafter conducted a review or audit of CMAR's Final Accounting, as defined in Section 9.2 below.

**9.2 Application for Final Payment Form.** The Application for Final Payment must be in such form as City may reasonably require.

- (A) Required Information. Application for Final Payment must be accompanied by the following to City's satisfaction:
  - (1) Waivers and Releases on Final Payment as provided in Section 12.1 of this Agreement;
  - (2) CMAR's accounting ("Final Accounting"), bearing the certificates of CMAR's chief executive and chief financial officers attesting to the completeness and accuracy of the Cost of the Work for which CMAR has received or seeks reimbursement from City;
  - (3) Architect of Record or the Engineer of Record certification to City that the Project is complete;
  - (4) Proof that CMAR has furnished to City the redlines, warranties, manuals and other close-out documents required by any of the Project Documents or applicable laws of City, county and state governments, or other authorities with jurisdiction over the Project;
  - (5) Certificates that demonstrate all insurance required by the Project Documents will remain in force after Final Payment is made and will be in effect as required;
  - (6) Such other documents substantiating the particulars of CMAR's Application for Final Payment (including additional backup for CMAR's accounting) as required by City, the Financing Parties and CMAR's Surety;
  - (7) Consent of CMAR's surety to the Final Payment; and

- (8) City may require CMAR to submit and meet to discuss a Draft Application for Final Payment, following the procedure provided in Section 9 of this Agreement.
- (B) Other Required Documents. CMAR must prepare or obtain and furnish to City upon completion, prior to and as a condition of the Application for Final Payment, in addition to any other documents as provided elsewhere in this Agreement, the following Project Documents:
- (1) A list of capital assets as described in Governmental Accounting Standards Board Statement No. 34, as it has been supplemented by subsequent pronouncements of the Governmental Accounting Standards Board;
  - (2) Warranties from Subcontractors and Suppliers;
  - (3) Manufacturer's warranties and manuals for all furniture, fixtures and/or equipment installed or furnished by CMAR (whether as Construction Services or as FFE);
  - (4) Air balance reports, equipment operation and maintenance manuals;
  - (5) Building certificates required prior to occupancy, mechanical, electrical and plumbing certificates, all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction; and
  - (6) Two sets (one reproducible on Mylar), plus one electronic set, of redline record drawings in size to match the Construction Documents showing complete information including descriptions, drawings, sketches, marked prints and similar data indicating the final "as built" conditions of the Work, and CMAR must keep redline record drawings up to date concurrently as the Work progresses.
- (C) Application for Final Payment Review. City will have thirty (30) days after its receipt of the fully completed Application for Final Payment within which to audit and/or review CMAR's Final Accounting.
- (1) City review will result in a Notice to CMAR:
    - (a) Identifying and disallowing any expenses that City has determined were not incurred and paid consistent with this Agreement;
    - (b) Approving the Contract Sum that the City will agree to pay; and
    - (c) The amount of the Final Payment to be transmitted to CMAR, after deduction for all payments previously made and applicable Withholding.
  - (2) CMAR must cooperate with City's review and/or audit by making all of its records available for inspection and copying, answering questions, and otherwise facilitating City's review promptly upon its request.
  - (3) City's review and/or audit of the Final Accounting will be conducted in accordance with City's established auditing policies and practices

and shall not be subject to review or challenge by CMAR or any third party.

- (D) Final Payment. Subject to the exchange of unconditional waivers and releases on Final Payment as provided in Section 12.1 of this Agreement, City will make the Final Payment to CMAR, within ten (10) days after City has issued its Notice of Final Payment in accordance with Section 9.2(C)(1)(c) above.
- (E) Payment for Withholding. If applicable Withholding exceeds amounts otherwise payable, CMAR must pay the difference to City within ten (10) days after demand from City.
- (F) Acceptance and Waiver. CMAR's acceptance of Final Payment will constitute a waiver of all Claims or Disputes that have not been timely submitted to City as CMAR Claims prior to CMAR's submission of the Application for Final Payment.

**10. Changes.** Changes in the scope of the Work or in the Project Schedule may be accomplished only by Change Order as defined in this Agreement. Change orders and/or Field Orders may not be used to increase the GMP, except as provided in Section 11 of this Agreement.

**10.1 Change Orders.**

- (A) Request for Proposal. If City requests CMAR to submit a proposal for a Change Order, CMAR will do so promptly, within ten (10) days after written request from City, on a form and following a procedure established by Project Manager. Any Change Order proposals shall specify CMAR's technical proposal for implementation of the proposed Change, together with CMAR's proposal for the resulting adjustment to the Contract Sum and/or Contract Times.
- (B) Acceptance. City may, in its sole discretion, accept or reject the Change Order proposal and negotiate an amendment to the Scope of Work which will be memorialized in an agreed upon Change Order. The Change Order may be subject to City Council approval. If the parties cannot reach agreement within ten (10) days after City has received the proposal, the Change Order proposed will be deemed denied and no change will be implemented.

**10.2 Field Orders.** City or Project Coordinator, when reasonable under the circumstances, may issue a written order that makes or authorizes minor deviations in the Work or provides necessary interpretation of the Construction Documents, provided such Field Orders do not cause an increase in the GMP.

- (A) City may issue a Field Order unilaterally or at the request of CMAR.
- (B) The total value of the work performed under any and all Field Order(s) may not exceed \$50,000 without City Council approval.
- (C) If CMAR disagrees that the deviation or interpretation is appropriate for a Field Order, it will provide Notice to City of its disagreement and City and CMAR may agree upon a Change Order.
- (D) Change Orders shall not be subdivided to avoid the requirements of the Procurement provisions of the City Code, as provided in Section 2-145.

**10.3 Authorization Required.** CMAR may not perform any Change, or be entitled to any compensation or extension of time, unless CMAR has first received a Change Order or Field Order as provided in this Section 10.

11. **CMAR's Claims.** CMAR may request an increase in the GMP or extension of the Contract Times, or both, that is otherwise permissible under this Agreement ("CMAR Claim") using the following procedure:
- 11.1 **CMAR's Duty to Mitigation Claims.** CMAR must at all times, and in all circumstances, use its best efforts to avoid or mitigate any potential impact of a CMAR Claim.
- 11.2 **Notice of CMAR Claim.** The request for a CMAR Claim must be preceded in each case by a written notice from the CMAR, submitted to both the City and its Project Coordinator, within five days of when CMAR first knew or should have known of the matter, occurrence or event that is the basis for the request for additional compensation or time ("Notice of Claim").
- (A) Information. The Notice of Claim must furnish sufficient detail to inform City and its Project Coordinator of the basis and cause of the CMAR Claim and must include:
- (1) A reasonable estimate of the amount of compensation or time CMAR anticipates it will require to avoid or mitigate any potential impact of the matter occurrence or event; and
- (2) A list of action CMAR intends to take in order to mitigate the time and cost impact of the situation that gave rise to or is related to CMAR Claim.
- (B) Supplementation. CMAR must supplement the Notice of Claim during the course of the Work as additional information becomes available.
- (C) Continuing Delays. Only one notice is necessary in the case of a continuing delay that is attributable to the same cause described in the Notice of Claim.
- (D) Waiver. If CMAR fails to submit a Notice of Claim within five days after CMAR first knew or should have known of the basis of the CMAR Claim, CMAR will be deemed to have waived the right to request or pursue a Notice of Claim arising from such matter, occurrence or event.
- (E) A CMAR's claim that requests an increase in the GMP shall only be approved by the City in advance of the work being performed. Such a request may also require City Council approval.
- 11.3 **Procedures for Resolving a CMAR Claim.** The procedures of this Section apply to requests for a CMAR Claim only. However, as provided in Section 36.2 of this Agreement, CMAR must continue to perform the Work during the pendency of any request for additional compensation or time under this Section.
12. **Additional Terms and Condition of Payment.**
- 12.1 **Lien Waivers and Releases.** Except as otherwise expressly set forth elsewhere herein, with each Application for Progress Payment, application for release of retention or other withholding, and Application for Final Payment, CMAR must submit lien waivers and sworn statements for the application from CMAR, and lien waivers and sworn statements from all Suppliers and third parties who have furnished labor, Construction Materials, equipment, tools, fixtures, services or other work directly or indirectly to or for CMAR, in form and substance as required by City to assure that the Site and Project will be free of liens arising from the Work for which the payment is requested.

**12.2 Reservations upon Payment.**

- (A) No Determination of Standard. No approval given or payment made by City is intended to be evidence of satisfactory performance of any Work, or of the sufficiency of any applicable application for payment.
- (B) Non-Acceptance. No payment to CMAR will constitute an acceptance of any Work not in accordance with this Agreement's requirements.
- (C) No Waiver of Defective Work. Any application for payment approval pursuant to A.R.S. § 34-607 will constitute approval solely for purposes of making payments and will not constitute a waiver of City's right to have all defective or incomplete Work corrected and performed in accordance with this Agreement, or to later modify or amend a Deficiency Notice or any approval or deemed approval previously given by City.

**12.3 Retainer.** An amount will be held by City as additional security for performance of CMAR's obligations, and may be applied by City towards payment of any back-charge, setoff, or other amount payable by CMAR to City.

- (A) Discretionary Reduction of Retainer. After the Work is 50% complete, CMAR may submit a request for reduction of the amount withheld from subsequent Progress Payments.
  - (1) If CMAR has performed its obligations on schedule and is otherwise in compliance with the Project Documents, City may, but will not be required to, reduce the retained amount from future Progress Payments to not less than 5%, subject to City's right to later reinstate an appropriate retainer if CMAR thereafter fails to perform any responsibility under the Project Documents.
  - (2) With the regular Progress Payment after CMAR has accomplished Substantial Completion, City may release unapplied retainer to CMAR, less an amount equal to 200% times City's estimate of the costs it would incur to engage a third party to complete any remaining Work.
  - (3) With the Final Payment, any retainer will be released to CMAR.
- (B) Withholding.
  - (1) The amount of each Progress Payment, or Final Payment, otherwise payable to CMAR will be reduced by the following amounts ("Withholding"), as applicable and such amounts shall be applied to any outstanding debts or charges owed to the City:
    - (a) Sums as permitted under applicable law on account of:
      - (i) The items identified in all applicable Certificates for Payment and/or Deficiency Notices and amendments thereto; or
      - (ii) Any additional amounts City in good faith believes are necessary to withhold, back-charge, or setoff in order to satisfy or cover any actual or reasonably anticipated loss, liability, damage or judgment that City has incurred or may incur in connection with CMAR's performance or non-performance of this Agreement;

- (b) Any Liquidated Damages then due.
- (2) City will make appropriate adjustments to Withholding after final disposition of the Application for Payment, Deficiency Notice, CMAR Claim or other cause that resulted in such Withholding.
- (3) If the expense incurred by City is less than the amount withheld, City may release the difference to CMAR within fourteen (14) days after such final disposition.
- (4) If, however, such expense exceeds the unpaid amounts otherwise due, CMAR must pay the difference within fourteen (14) days after demand from City.

#### **12.4 Payments to Supplier.**

- (A) Remittance to Supplier. Although not required by Section 8 or elsewhere in this Agreement, the City, at its sole discretion, may:
  - (1) Pay any Subcontractor or Supplier directly for performance of the Work, or
  - (2) Issue joint checks For payment to Subcontractor or Supplier if:
    - (a) CMAR agrees to accept joint checks and to execute, when requested by City, joint check agreements in a form acceptable to City.
    - (b) Joint checks and direct payments made pursuant to this section will be credited against the Contract Sum.
- (B) Communications with Supplier. Although not required before the City makes such direct payment, CMAR consents to the City's direct payment and to City communicating directly with CMAR's Subcontractors, Suppliers and other Vendors.

#### **12.5 Non-Incorporated Construction Materials.** CMAR must not charge City for any Construction Materials that are not used for the Work or to complete the Project, unless City has given its written agreement to pay such charges.

- (A) Storage of Materials. City may condition its approval on its determination that the Construction Materials are suitably stored and properly secured from casualty, properly insured, and that title has passed to City free and clear of any liens or encumbrances.
- (B) Receipt of Documentation. City may further condition the making of payments for Construction Materials not used for the work or to complete the Project upon receipt of contracts, bills of sale, or other agreements satisfactory to City to establish City's title to the Construction Materials, or otherwise protect City's interest.

### **13. Project Coordinator.** The City's Project Coordinator will assist City in this Agreement's administration and overall Project administration.

#### **13.1 Project Coordinator's Authority.** The City's Project Coordinator and his/her staff, if any, have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent and has no authority, express or implied, to bind City to any obligations.

#### **13.2 Project Coordinator's Duties.**

(A) The City's Project Coordinator shall provide direction and communicate with CMAR, and will review and make recommendations to City regarding:

- (1) The Work and Work Product;
- (2) The Services furnished by CMAR in connection with the Project; and
- (3) CMAR's invoices.

(B) The City's Project Coordinator may have other duties and responsibilities as the City may delegate or designate in writing from time to time.

**13.3 Cooperation.** CMAR agrees to cooperate with the City's Project Coordinator so as not to result in any delay in the progress of the Work or completion of the Project.

#### **14. Subcontractors and Supplier.**

**14.1 Subcontractors** Unless otherwise agreed upon in writing by City and CMAR, the Construction Services will be performed by qualified Subcontractors and Suppliers, who will be selected and engaged by the CMAR, with approval of the City, as provided in Section 14.2 and 14.3 below.

CMAR will be responsible and liable to City for the Work's proper and timely performance by any and all of its Subcontractors, Suppliers and any other person or entity who furnishes any Work for this Project on CMAR's behalf.

**14.2 Subcontractor Selection.** Subcontractors will be selected on the basis of qualifications alone, or a combination of qualifications and price, but not price alone, as provided in the Subcontractor's Selection Plan developed by CMAR and submitted during the selection process. The process for Subcontractor selection will include:

- (A) Selection may be a single step process, based on a combination of qualifications and price, or a two-step process, where the first step is a screening of applicants based on qualifications and the second step is based on a combination of qualifications and price or on price alone;
- (B) CMAR will then determine, with City's advice, which bids or proposals will be accepted;
- (C) CMAR may obtain bids or proposals from Subcontractors from the list previously reviewed and, after analyzing such bids or proposals, will deliver copies of such bids or proposals to City;
- (D) CMAR will not be required to contract with anyone to whom CMAR has a reasonable objection;
- (E) Requests for submittal of qualifications must be in writing, and kept by CMAR in its Project records; and
- (F) Each Subcontract must meet other requirements set forth in all applicable sections of this Agreement, including, but not limited to, this Section and Sections 17, 18 and 30.
- (G) Solicitation and selection of subcontractors shall be conducted in accordance with ARS Title 34, the City's Procurement policies, and the City Code.

**14.3 Subcontracts.** Except as provided in Section 14.5 of this Agreement, each subcontract must:

- (A) Be in writing, and signed by both the CMAR and Subcontractor;



- (B) Provide for a fixed, or not-to-exceed amount as the Subcontractor's entire compensation;
- (C) State that the Subcontract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);
- (D) Bind and obligate the Subcontractor to CMAR as CMAR is bound to City under this Agreement;
- (E) State that City is the intended third-party beneficiary of the subcontract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Subcontractor for any breach of Subcontractor's obligations under the Subcontract, or any breach of any warranty given by Subcontractor;
- (F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;
- (G) Contingently assign the subcontract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Subcontractor of written notice—which City is not obligated to give;
- (H) Obligate Subcontractor to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Subcontractor's performance or nonperformance of the subcontract;
- (I) Include a termination for convenience clause equivalent to Section 35.5 of this Agreement;
- (J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnities, all Indemnified parties identified in Section 30 of this Agreement;
- (K) Include any other provision required by the Project Documents; and
- (L) Agree to contract with Supplier as provide in Section 14.4 below.
- (M) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;
- (N) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

**14.4 Supplier.** Except as provided in Section 14.5 below, each agreement between CMAR and Supplier, between any Subcontractor and Supplier or any other parties contracted to provide Work or perform tasks, activities or actions on the Project must:

- (A) Be in writing, and signed by both the CMAR and Supplier;
- (B) Provide for a fixed, or not-to-exceed amount as the Supplier's entire compensation;

- (C) State that the Supplier's contract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);
- (D) Bind and obligate the Supplier to CMAR as CMAR is bound to City under this Agreement;
- (E) State that City is the intended third-party beneficiary of the Supplier's contract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Supplier for any breach of Supplier's obligations under its contract with CMAR, or any breach of any warranty given by Supplier;
- (F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;
- (G) Contingently assign the Supplier's contract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Supplier of written notice—which City is not obligated to give;
- (H) Obligate Supplier to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Supplier's performance or nonperformance of the subcontract;
- (I) Include a termination for convenience clause equivalent to Section 35 of this Agreement;
- (J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnitees, all Indemnified parties identified in Section 30 of this Agreement; and
- (K) Include any other provision required by the Project Documents.
- (L) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;
- (M) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

#### **14.5 Immigration Law Compliance.**

- (A) **CMAR**, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- (B) Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- (C) City retains the legal right to inspect the papers of any CMAR or subcontractor employee who performs work under this Agreement to

ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.

- (D) City may conduct random inspections, and upon request of City, CMAR shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- (E) CMAR agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- (F) CMAR's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement. 14.5.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**14.5 Condition Precedent to Work of Supplier.** Satisfaction of all requirements of this Section 14 is a condition precedent of Subcontractor or Supplier's right to commence any Work element and to receive the payment of any amount otherwise payable to CMAR for any Work performed by the Subcontractor or Supplier.

- (A) Compliance Warranty. By permitting a Subcontractor or Supplier to commence any Work element, CMAR conclusively warrants to City that all of this Agreement's requirements have been fulfilled and must continue to be fulfilled as to the Subcontractor or Supplier.
- (B) CMAR Responsibility for Supplier. CMAR is solely responsible and liable to City for the Work's proper and timely performance by each Subcontractor and Supplier.
- (C) Copies of Subcontracts. CMAR shall furnish a copy of any subcontract or third party contract, including those with any Supplier, to City within two (2) days after it is requested by City. City shall have no obligation to make such a request, or to review any Subcontract or Supplier when received, and no review, non-review, objection or failure to object by City shall relieve CMAR and its Subcontractors and Suppliers from their responsibilities for fulfilling this Agreement's requirements.
- (D) Change of Subcontractor Approval. CMAR will not change a Subcontractor after the Subcontractor has been approved by City, without City's written consent to the change.

## **15. Self-Performed Work.**

**15.1 Selection of CMAR.** CMAR, its subsidiary, affiliate or entity under control of CMAR, may seek to self-perform portions of the Construction Services only if

selected by City following this Agreement's full subcontractor procurement process, and if and only:

- (A) CMAR has been selected by City in accordance with City Code 2-145 and as provided in Section 14.2 of this Agreement, or
- (B) City has given prior written approval to CMAR's self-performance of *de minimus* Construction Services, such as minor clean-up work (but only to the extent of the type of *de minimus* work and the not-to-exceed amount authorized in City's written approval).

**15.2 Contract for Self-Performed Work.** If CMAR is selected to self-perform portions of the Construction Services, a written subcontract will not be required, as this Agreement's provisions will apply. Prior to initiation of the self-performance of Work, the City and CMAR will agree to a written scope of work to be self-performed and a lump sum to be paid for such self-performed work. This lump sum will not exceed the amount budgeted for performance of the same work by a Subcontractor or other third party and will include CMAR's direct and indirect compensation, labor, labor burden, supervision, overhead, and all other costs. CMAR's self-performance of any Work allowed under this Section will not change, in any way, the amount CMAR is entitled to as compensation under this Agreement or the Contract Sum, CMAR's Fee or the GMP, as those terms are defined and calculated in Section 7 of this Agreement.

**16. Performance Standards.** CMAR warrants to City that:

**16.1 Standard of Care.** CMAR, its Subcontractors and Suppliers, will perform their respective obligations under this Agreement with the professional diligence and care prevailing among highly skilled and experienced members of the industry with demonstrated ability to timely and properly complete construction projects equivalent to the Project (the "Standard of Care"), on schedule, within budget, and without obvious or latent defects.

**16.2 Standard of Work.** The Work must be:

- (A) In accordance with the requirements of the Project Documents;
- (B) Free from defects; and
- (C) Fit for City's intended use.

**16.3 Standard of Construction Materials.** All Construction Materials will be new and in excellent condition, except to the extent specifically provided otherwise in the Project Documents.

**16.4 Quality Control.** CMAR must establish, maintain, and implement a quality control program that is consistent with that described in the CMP and which is:

- (A) Sufficient to insure proper supervision, examination, inspection, and testing of all item of Work at appropriate intervals, including the work of Subcontractors, Supplier, suppliers; and
- (B) Sufficient to assure conformance to the Project Documents with respect to Specifically Described Items, as defined in Section 22.2 of this Agreement, and general workmanship, construction, and equipment (including maintenance, while-idle, and functional performance) requirements.

**17. Regulatory Compliance.**

**17.1 Duty to Comply.** CMAR must comply with all federal, state, county, and local laws, including, statutes, rules, regulations, codes, ordinances, executive orders, and other

legislative, executive, or judicial requirements and/or decisions (collectively, "Laws") applicable to the Work whether or not specifically referenced elsewhere in this Agreement. Compliance with such Laws shall include, but not be limited to:

- (A) Compliance with Laws pertaining to contractor licensing, occupational health, safety, disabilities, building codes, construction standards, licensure, social security, employment, workers compensation, immigration, wages, payrolls, health, discrimination, equal employment opportunity, civil rights, storm water, solid wastes, Hazardous Substances, grading, air pollution, water pollution, waste disposal, human remains, land use, historic preservation, endangered or threatened species, navigable waters, waters of the United States and tributaries thereof, and any other Laws applicable to the performance of the Work; and
- (B) Compliance with any applicable standards, specifications, manuals, or codes of any technical society, organization, or association, adopted by City (and as may be modified from time to time), or those commonly used as the industry standard in the design and construction of projects comparable to the Project being performed and completed in accordance with this Agreement by the CMAR.

**17.2 Notification of Investigations.** To the fullest extent permitted by applicable Law, CMAR will notify City, and, in each case, require its Subcontractors and Suppliers to notify City, within twenty-four (24) hours of a demand for records or notice of audit being received and/or any inspection or other investigation is commenced by any federal, state or local governmental agency that relates to the Work, including, without limitation:

- (A) Any Site inspection or investigation conducted to determine compliance with any Laws or permits pertaining to Hazardous Substances, waste, dust control, air quality, water pollution, storm water runoff, endangered species, navigable waters, occupational health or safety; and
- (B) Any inspection, audit or other investigation, whether on- or off-Site, conducted to verify the immigration and/or worker authorization status of any person employed or contracted by CMAR, its Subcontractors, or any Supplier.

**17.3 City's Rules.** City has the right, but not the obligation, to adopt and prescribe from time to time one or more rules and regulations ("City's Rule(s)") governing parking, access, times of work, noise, behavior towards City's employees, customers, guests or invitees, and such other matters not involving the means, method, techniques or manner of the Work's performance that City deems pertinent to preventing disruption to City's ongoing operations.

- (A) CMAR will enforce, and will be responsible to City for, the failure of its employees, or employees of its Subcontractors or Supplier to comply with City's Rules.
- (B) Compliance with City's Rules will be a condition to the right of any person to enter upon any of City's property. City has the right to revoke such right of access to any person who has breached or failed to comply with any of City's Rules.
- (C) The issuance or non-issuance, enforcement or non-enforcement of City's Rules by City will not relieve CMAR from its sole and exclusive responsibility to City for taking all appropriate precautions, in accordance with applicable

Laws, to ensure the health and safety of persons and property with respect to the Work.

**17.4 Compliance Assurances.** CMAR warrants to City that CMAR and its Subcontractors and Suppliers are in compliance with all of the following:

- (A) Subcontractors and Supplier now hold—and, at all times relevant to this Project, will hold—all licenses, registrations and other approvals necessary for the lawful performance of the work; and
- (B) Subcontractors and Suppliers are not—and, at all times relevant to this Project, will not—be debarred or otherwise legally excluded ("Debarred") from contracting with any federal, state or local governmental entity; and
- (C) Except with City's knowledge and consent, Subcontractors and Suppliers will not:
  - (1) Accept trade discounts;
  - (2) Have a significant direct or indirect financial interest in CMAR or any of its Subcontractors or Supplier; or
  - (3) Undertake any activity or employment or accept any contribution that conflicts, directly or indirectly, with the City's interests.

**18. Health and Safety.**

**18.1 General Safety Duty.**

- (A) CMAR is solely responsible for the safety and health effects of the Work as it may impact all persons and property whether or not under CMAR's control.
- (B) CMAR shall at all times:
  - (1) Provide proper traffic control, warnings, and all other measures necessary to protect City and City's residents, employees, invitees, licensees, and agents, and all other third persons from illness, sickness, death, personal injury or property damage arising from or relating to the Work; and
  - (2) Maintain a safe working environment, in full compliance with all applicable Laws, especially such laws relating to occupational health and safety and drugs in the workplace.

**18.2 Hazardous Substances.** CMAR is responsible for the proper handling, management, storage, transportation and disposal of every substance, material and equipment it brings to the Site, and in the conduct of its operations, so as to prevent the release of any Hazardous Substance:

- (A) Remediation. CMAR is responsible for the cost of investigation, characterization, management, response and/or remediation of a release or threatened release of a hazardous substance. CMAR is also responsible for all other losses and damages to City or any third party resulting from any release or threatened release of a hazardous substance by CMAR or any of its subcontractors or suppliers.
- (B) Actions upon Discovery. If CMAR discovers material on the Site that may be a Hazardous Substance, then CMAR must immediately:

- (1) Notify the City and the National Response Center if the Hazardous Substance presents or may present an imminent threat or endangerment to public health or welfare or the environment;
- (2) Notify City in writing of the discovery of the Hazardous Substance and provide all relevant information if the Hazardous Substance does not present an imminent threat or endangerment to public health or welfare or the environment;
- (3) Discontinue Work and take whatever precautions are necessary to protect persons and property from exposure to the Hazardous Substance, including, but not limited to, taking actions to prevent the release or threatened release of such material or any action that may accelerate the release of or threatened release of such Hazardous substance in accordance with applicable Laws or the direction provided by any regulatory agency such as the EPA, ADEQ or the Maricopa County Environmental Services Department;
- (4) CMAR may resume operations in the affected area only after City has determined that the material is either not a Hazardous Substance or that it is a Hazardous Substance but the response has remedied, eliminated, mitigated or managed the risk in accordance with applicable Law; and
- (5) If the remedy directed by City results in a delay to the Work's critical path, and if CMAR did not cause, allow, or contribute to the release or threat of release of the Hazardous Substance, CMAR may seek an equitable adjustment of the Contract Times and Contract Sum, in accordance with Section 11 or Section 20.3(E) of this Agreement.

### **18.3 Waste.**

- (A) Waste Defined. "Waste" includes any dust, solids, liquids or other form of inert or discardable material that is not a Hazardous Substance, pollutant or contaminant.
- (B) Waste Management. CMAR must maintain proper precautions so that the amount of Waste resulting from CMAR's Work is at all times:
  - (1) Kept at minimum;
  - (2) Confined within the Site; and
  - (3) Not permitted to interfere with or disturb City's ongoing operations or the activities of City's employees, customers, residents, guests, invitees, or licensees.
- (C) Waste Removal. All Waste must be removed from the Site each day, pursuant to a plan approved by City, and the Waste must be properly transported and disposed of at an appropriate disposal facility in accordance with applicable Law.
- (D) Contract. CMAR must contract with City for any Waste removal. CMAR may be charged for the City's provision of waste management collection and disposal services at the then market rate. Such charges shall be considered part of the Construction Services Cost and will not effect the CMAR's Fee, the Contract Sum or the GMP.

**19. Permits.**

- 19.1 Duty to Secure.** CMAR will timely and proactively apply for, and undertake all actions necessary to secure and comply with all federal, state and local permits, licenses and approvals required for the Work. CMAR must also provide adequate time in the construction schedule to secure all required permits and approvals.
- 19.2 Costs of Permits.** The cost of permits, licenses, connection fees, and other such fees must be included in the Construction Services Costs. If CMAR's actions cause the cost of the Work to increase because permit application review and issuance may cause it to fail to meet the Construction Schedule, the cost for obtaining expedited review and approval of such permit applications must be borne solely by CMAR. Such cost will also not be reimbursed by City or be used as a justification to seek an adjustment or increase of the GMP.
- 19.3 Public Hearings.** CMAR will attend and participate in all public hearings held by local governmental jurisdictions and utilities in connection with the issuance and compliance with such permits, licenses and approvals.
- 19.4 Compliance.** CMAR and each of its Subcontractors and Suppliers must comply with, give all notices and take all actions required by all permits issued for the Work. Any failure to comply with the terms and conditions of such permits will be the responsibility of the CMAR and any penalties imposed for such failure(s) shall be borne by the CMAR alone.

**20. Site.**

- 20.1 Legal Right to Project Site.** City represents that it has legal right to place water lines within the easements that comprise the Project site and that all known easements, licenses, and restrictions that may affect the Project have or will be timely disclosed.
- 20.2 On-Site Locations.**
- (A) Reference Points. City will provide engineering surveys to establish reference points for construction which in City's judgment are necessary to enable CMAR to begin the Work.
  - (B) Site Layout. CMAR will be responsible for laying out the Work, protecting and preserving the established reference points and must not make change relocations without the proper written approval of City.
  - (C) CMAR's Responsibilities. CMAR must report to City whenever any reference point is lost or destroyed or whenever relocation of a reference point is required due to necessary changes in grades or locations. CMAR will be responsible for the accurate replacement or relocation of the reference points by professionally qualified personnel.
- 20.3 Newly Discovered or Changed Conditions.** As Design Phase Consultant, CMAR has specialized and detailed knowledge of the site and the conditions pre-existing for construction of the Project. Based on this knowledge, CMAR warrants and represents that CMAR:
- (A) Inspection. Has conducted a visual inspection of the Site, reviewed the soils report, and performed all other due diligence activities CMAR considers adequate to verify the conditions of the soils and other conditions at the Site;
  - (B) No Defects. Has observed no defects, discrepancies, deficiencies or faults with the Site making it unsuitable for the Project or found any defects,



discrepancies, deficiencies or faults in any Project Documents that would require further investigation (except those that have already been reported to City in writing as the Design Phase oversight contractor); and

- (C) Acceptance. Accepts the condition of the soils and the Site as being fit and proper to allow for the full performance of the Work.
- (D) Discovery of Conditions. If, at any time CMAR during the performance of the Work, CMAR encounters previously unknown conditions at the Site, which could not reasonably have been detected by CMAR's investigation or during CMAR's performance prior of Design Phase services at the site, and that make it unsuitable for the Work's proper and accurate performance, CMAR must promptly:
  - (1) Discontinue Work in the affected area;
  - (2) Leave the Newly Discovered or Changed Conditions as they are found (taking reasonable precautions for the protection of persons and property);
  - (3) Notify City and its Project Coordinator (immediately by phone or email, followed by written notice within 24 hours identifying the Newly Discovered or Changed Conditions with specificity); and
  - (4) Await clarification and direction before CMAR proceeds with any Work that may be affected.

For purposes of this Section, "Newly Discovered" or "Changed" conditions shall include, without limitation: conditions in or beneath the Site that differ materially from indications in the Design Documents or information that was known or could have been reasonably discovered by CMAR during its performance of Design Phase Services, or other newly discovered or changed conditions that may adversely impact the Work that occurred after Design Documents were approved as final.

- (E) Equitable Adjustment. If the Newly Discovered or Changed Conditions could not be reasonably discovered or foreseeable by CMAR during its performance of Design Phase review services, CMAR may seek an equitable adjustment of the Contract Times and GMP for any resulting critical path delays or additional expenses incurred by CMAR, subject to Sections 10 and 11 of this Agreement
- (F) Liability and Responsibility. If CMAR proceeds with Work after discovery of a Newly Discovered or Changed Condition without notifying City, suspending applicable Work as provided in this Section and getting the City's approval to proceed, CMAR will be liable and responsible to City for all resulting losses, liabilities, damages, and expenses. CMAR proceeds without so notifying the City and obtaining its approval, CMAR will have waived any right to seek a CMAR Claim or Equitable Adjustment as provided herein based on any Newly Discovered or Changed Condition.

**20.4 Underground Facilities.** CMAR will comply with the provisions of A.R.S. § 40-360.21 *et. seq.*, relating to underground facilities, and further:

- (A) Other Owners. CMAR acknowledges that City is not the owner of some underground facilities on, or contiguous to, the Project Site. "Underground facilities" includes, but is not limited to, electrical conduit, water irrigation

canals and ditches, gas lines, telecommunications lines, or other communications fibers, and such facilities may be owned and/or operated by governmental or private entities;

- (B) Information and Data. The information and data shown or indicated on the Design Documents and other site specific documents concerning existing underground facilities at, or contiguous to, the Project Site will be based on the information and data furnished to City by the owners or operators of the underground facilities;
- (C) CMAR's Responsibilities. City will not be responsible for the accuracy or completeness of the information or data provided by others. CMAR will have the responsibility for the following activities, the cost of which are included in the GMP:
  - (1) Reviewing and verifying the information and data provided by others;
  - (2) Locating all underground facilities on, or contiguous to, the Project Site, to the extent knowledge of adjacent underground facilities is necessary and reasonable to secure;
  - (3) Coordinating the Work with the owners of the underground facilities during construction;
  - (4) Providing for the safety and protection of all underground facilities affected by the Work; and
  - (5) Integrating any underground facility into the Work as necessary.
- (D) Repair and Replacement. City will not be responsible for any repair or consequential damages resulting from CMAR's mistake in locating or failing to locate underground facilities and taking such locations into account when performing the Work.
- (E) City-Owned Underground Facilities. City will provide CMAR with information and data about the location and characteristics of any underground facility that it owns, such as water and sewer lines. The CMAR may rely on that information and data.

**20.5 Archaeological Deposits.** In accordance with A.R.S. § 41-844, if CMAR discovers any archaeological sites or objects, CMAR must promptly report them to City and Director of the Arizona State Museum:

- (A) CMAR will further ensure compliance with the provisions of State law with respect to archaeological sites or objects; and
- (B) CMAR may be allowed an adjustment for time depending on the extent of the tasks required to catalogue and preserve the find and to mitigate any impact such find may have on the Work.

## **21. On-Site City Activity.**

**21.1 Partial Utilization.** Before Final Completion of the Project, as defined in Section 6.6 of this Agreement, City may divide the Project and place a portion of the Project into use, if such that portion has been completed. The City may exercise the option to divide and use a portion of the Project if:

- (A) The Design Documents identify a distinct phase of the Project, and the part of the Project being sought to be placed into use has been completed ; or

- (B) City and CMAR agree that the portion sought to be placed into use is a separately functioning and usable part of the Work that can be used by City for its intended purpose without significantly interfering with CMAR's timely and proper performance of the remainder of the Work.
- (C) If the Project is not phased and City decides to place a part of the Project into use such that CMAR incurs additional costs or requires additional time, CMAR may present a CMAR Claim for additional time or compensation in accordance with Section 11 of this Agreement.

**21.2 City's Performance of On-site Work.** City may perform other work on-site that is related to the Project using the City's own work force, or contractors, vendors or suppliers. Such work may include, but not limited to, utility relocation or co-location, (e.g., electric, gas, telecommunications)("City's On-site Work").

- (A) Access. CMAR will assure that the entities handling the City's On-site Work have safe and proper access to all portions of the Project Site necessary for the performance of the City's On-site Work.
- (B) Materials and Equipment. CMAR will assure that persons performing the City's On-site Work have adequate space to transport, handle, stage and store materials and equipment and adequate space and opportunity to conduct the City's On-site Work.
- (C) Coordination. CMAR will coordinate its Work with the City's On-site Work so that both parties may perform their Work in a timely and efficient manner.
  - (1) Unless otherwise provided in the Project Documents, CMAR will perform all cutting, fitting, and patching of material or elements of the Work that may be required to make the CMAR's Work and the City's On-site Work consistent and functional.
  - (2) CMAR will not endanger the City's On-site Work while integrating the parties' performance.
  - (3) If the CMAR's completion of any portion of the Work depends on the completion of City's On-site Work, CMAR will inspect the City's On-site Work and timely report to City any delays, defects, or deficiencies that may delay or hinder CMAR's completion of the Work. A failure by CMAR to inspect and report the City's On-Site Work will constitute acceptance of that Work and any objection or request for a CMAR Claim or Equitable Adjustment CMAR may have is deemed to be waived.

**21.3 Transfer of Control.** In the event control of the Project Site is transferred from CMAR to a third party, CMAR and City will work to assure that safety of the Project Site is not compromised, that access to and control of the Project Site is maintained, that proper insurance is in place and that the Work will continue without undue delay.

**22. Inspection of Work.**

**22.1 City Inspections.** City has the right to inspect the Work at any time for any purpose.

- (A) Required Inspections. Certain aspects of the Work will require inspections in accordance with existing City Ordinances and City Code provisions or in accordance with the scope of Work as set forth in this Agreement.

- (1) CMAR must timely schedule and perform or participate in any required inspections and testing.
  - (2) CMAR will pay all costs associated with any required inspections, and these costs shall be included in the GMP. The costs of any testing or collection of data that is required for the inspection of City shall not be the basis for any Change Order, CMAR Claim, Equitable Adjustment, or an amendment to the GMP.
  - (3) CMAR must obtain and provide to City Certifications or warranties required or any test results or analyses which were generated from the required inspection or testing.
- (B) Cooperation. CMAR will cooperate fully with any inspections conducted by the City. The City will attempt to coordinate its inspections with the CMAR so as not to disrupt the Work; however, inspections for life or safety issues will be handled by both parties on a priority basis.
- (C) Independent Inspections. City may employ the services of an independent party to conduct any tests or inspections at City's cost and expense.

**22.2 Specifically Described Items.** If any material, component, or equipment (collectively, an "Item") is specified or described in the Project Document, Construction Document, or other document submitted to City by CMAR or required by industry standard, trade, proprietary, or supplier name, that Item shall be used in performing or completing the Work.

- (A) "Or-equal". If the specification or description contains or is followed by the words "or-equal", other Items of a similar kind or nature may be accepted by City, in its sole discretion, if the City determines, prior to the substitution, that the Item proposed by CMAR is qualitatively and functionally equal to of the Specifically Designed Item.
- (B) Substitutions. If CMAR proposes to use an Item different than that which is specifically described or named, CMAR must obtain the City's approval of such substitution prior to use or prior to any modification or deviation intended to accommodate the use.
- (1) CMAR must submit a request for substitution in writing to City.
  - (2) CMAR must submit with the request for substitution the following:
    - (a) Information about the Item sufficient for City to make a determination whether the Item is essentially equivalent to that named and is an acceptable substitute.
    - (b) Any effect the substitution may have on timely achievement of the Substantial Completion date;
    - (c) Any cost or credits that will result from the substitution; and
    - (d) Any other relevant information requested by City.
  - (3) City approval of any substitute Item will be within its sole discretion.
  - (4) CMAR is responsible for the costs associated with making the request for substitution, including the cost of obtaining the data.
  - (5) Approval of such substitution does not constitute an agreement to increase the GMP or constitute issuance of a Field Order or Change

Order. CMAR must still obtain separate approval for the increased cost in accordance with the procedures continued elsewhere in this Agreement.

**22.3 Uncovering Work.** City or its Project Coordinator may require CMAR to uncover Work for inspection and testing.

(A) Builder's Responsibility. If the Work had been covered without CMAR's compliance with all applicable inspection and approval requirements of the Project Documents, CMAR must properly remedy or replace all nonconforming or deficient Work, and adjacent property damaged thereby, to City's satisfaction. CMAR must also pay the costs City incurred in connection with uncovering, testing, inspecting, remedying and recovering the Work.

(B) City Responsibility. If the Work had been covered in accordance with all applicable inspection and approval requirements of CMAR Documents, City will pay the costs CMAR reasonably incurred to uncover, test, inspect, and remedy the Work, subject to § 11.

**22.4 Rejected Work.** CMAR must promptly, and so as not to interfere with the Project Schedule, remove and replace, at CMAR's sole expense, any Work that is rejected by City or its Project Coordinator as defective, contrary to CMAR's warranties, or otherwise not in accordance with the Project Documents.

**22.5 City's Remedy.** If CMAR does not correct such deficient or nonconforming Work within seven (7) days, or initiate any Work that would reasonably take longer than seven (7) days, after receipt of written notice from City to do so, City may, without prejudice to any other remedies it may have, take whatever steps are necessary to correct the deficient or nonconforming Work, and CMAR will pay City the costs City incurs in connection with any corrective action.

## **23. Warranties.**

**23.1 CMAR Warranty.** CMAR warrants that the Work performed pursuant to this Agreement is free from defects. Upon 20 days written notice from the City, and within two years from the Final Completion of the Work, CMAR must, at CMAR's sole expense, uncover, correct, and remedy any and all defects in CMAR's Work or any defects in work of CMAR's Subcontractors or Suppliers.

**23.2 Third Party Warranties.** If any other Contract Document or third party warranty provides for a period longer than two years, the longer period applies.

**23.3 Call-Back Remedial Work.** CMAR, at CMAR's sole expense, will properly restore any of the Work or property that is damaged by reason of any remedial Work, to City's satisfaction.

(A) Warranty on Remedial Work. All remedial Work will have an extended warranty equal to the later of Final Completion or six (6) months after completion of the remedial Work.

(B) Self-Help. If CMAR fails to correct any defects in accordance with this call-back warranty, then City may correct the defects and CMAR must reimburse City for all expenses incurred by City.

(C) Non-exclusivity. This express call-back warranty is given in addition to, and without any limitation on, any other claim, right or remedy City may have under this Agreement or applicable Law including, without limitation, any

claim, right or remedy arising from tort, contract breach, license bond, recovery fund, latent defect, breach of the implied warranty of habitability, CMAR's violation of any Law, or any other claim, right or remedy, whether discovered before or after the above described call-back period (as may be extended above).

- (D) No Fault of CMAR. This express call-back warranty excludes remedy for damage or defect caused by abuse, modifications not executed by CMAR, improper or insufficient maintenance, improper operation, or ordinary wear and tear usage.

**24. Liens and Stop Notices.**

- 24.1 Title to Work.** CMAR warrants that title to all Work covered by an Application for Progress Payment or Application for Final Payment will pass to City no later than the time of payment.
- 24.2 Work Free of Liens.** CMAR further warrants that, upon Application for Progress Payment or Application for Final Payment submittal, all Work for which payment is requested and received from City must, to the best of CMAR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances.
- 24.3 Duty to Remove Liens.** In the event any document intending to give rise to a lien, or any other claim is asserted, filed, or maintained against the Project or City contrary to the foregoing warranty by CMAR, Subcontractor, or any Supplier, then CMAR agrees to cause such lien or claim to be satisfied, removed, or otherwise discharged at its own expense, by payment, bond or otherwise, within ten (10) days from the lien's filing date.
- 24.4 City's Remedy for Liens.**
- (A) City Right to Action. If CMAR fails to take such action promptly after notice from City, then City has the right, in addition to all other rights and remedies available under this Agreement or at Law, to cause each such lien or claim to be removed, satisfied or discharged by whatever means City chooses.
- (B) Costs and Expenses. CMAR will be responsible for the entire cost and expense of this lien removal action, including reasonable attorneys' fees and expenses incurred by City, and will remit payment for these costs and expenses immediately upon demand by City.
- 25. No Waiver.** Any review or approval given, or payment made, by City or any of its representatives does not:
- 25.1** Constitute acceptance of CMAR's Work or of the sufficiency of any request for payment;
- 25.2** Operate as an acquiescence to, or waiver of, any departure from, or CMAR's failure to perform in accordance with, any of this Agreement's requirements;
- 25.3** Constitute approval of:
- (A) The adequacy, form or content of any subcontract; or
- (B) Any actions taken by CMAR or by any Subcontractor.
- 25.4** Relieve CMAR, any Subcontractor or Supplier of any obligations or responsibilities under this Agreement;

- 25.5 Be accepted as evidence of satisfactory performance of any Work; or
- 25.6 Diminish in any manner City's rights and remedies under this Agreement or applicable Law.
26. **CMAR's Warranties and Representations.**
- 26.1 **Warranty.** As an inducement to City to enter into this Agreement, CMAR represents and warrants the following to City (in addition to the other representations and warranties contained in the Agreement) that:
- (A) Financial Condition. CMAR, its subsidiaries and its affiliated entities are financially solvent and able to pay their debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations under this Agreement, provided that City satisfies its payment and other obligations under this Agreement;
  - (B) Performance Ability. CMAR is able to furnish the Construction Services and FFE Services required to complete the Project and perform its obligations hereunder, provided that City satisfies its payment and other obligations, and that CMAR has sufficient experience and competence to do so;
  - (C) Litigation Status. There are no pending or threatened legal actions or proceedings which might materially impair CMAR or its subsidiaries or affiliated entities' ability to satisfy their obligations hereunder;
  - (D) Legal Status. CMAR, its subsidiaries and affiliated entities are licensed by the Arizona Registrar of Contractors to perform construction and that all construction Subcontractors and Suppliers used on this Project by CMAR also will be so licensed; and
  - (E) Proper Authorization. That execution of this Agreement and its performance are within its authorized powers.
- 26.2 **Survival.** These representations and warranties survive this Agreement's termination and the Project's Final Completion, whichever is later.
27. **CMAR Relationship to City.**
- 27.1 CMAR's relationship to City is in all respects that of an independent contractor.
- 27.2 CMAR is solely responsible for the means, manner, method, supervision, performance, coordination, safety programs, or control of the Work to be performed by CMAR.
- 27.3 CMAR is not and will not be found to be an employee, instrumentality, department or agent of City for any purpose.
- 27.4 This Agreement will in no respect be construed to create a partnership, joint venture, or agency between the parties.
- 27.5 Neither party has right or power to bind or obligate the other party for any liabilities or obligations without the other party's prior written consent.
28. **Assignments.**
- 28.1 **City Assignment.** City may assign or transfer this Agreement without CMAR's consent.
- 28.2 **City Financing.** CMAR agrees that if City assigns this Agreement to any lender or other third party source of funding for the Project (each, a "Financing Party");

- (A) CMAR will cooperate with any such assignments, and will execute any consents, assignments and other instruments reasonably required to facilitate the assignments;
- (B) CMAR will cooperate with any inspectors engaged by a Financing Party to observe or inspect the work; and
- (C) CMAR will execute any documents that the Financing Party reasonably requests it to execute in connection with its review of any of CMAR's Work or any of City's requests to Financing Party for disbursements on account of the Work.

**28.3 CMAR Assignment.** CMAR will not, without City's prior written consent, which may not be unreasonably withheld, do the following:

- (A) Sell, transfer, assign or delegate any interest in this Agreement or any rights or CMAR's obligations; or
- (B) Until Final Payment is made, cause, suffer or permit:
  - (1) Any sale, transfer or assignment of any stock, membership or other equity ownership interest in CMAR, or
  - (2) The issuance of any new stock or other equity ownership in CMAR.

**28.4 Void Assignments.** Any transfer, sale, assignment, delegation, or issuance of any stock, membership, or other interest in CMAR without City's written consent is void.

**29. Taxation of Revenue Bonds.** City may issue revenue bonds to fund the Project's design, construction and implementation. If City issues these bonds:

- 29.1** CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, covenants that it will not knowingly take any action, or fail to take any action, that adversely affects the inclusion from gross income of the interest on any of revenue bonds under § 103(a) of the *Internal Revenue Code of 1986, as amended* (the "Code");
- 29.2** CMAR will not cause the interest on any revenue bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code; and
- 29.3** In the event of such action or omission, CMAR will, promptly upon having any action or inaction brought to its attention, take any reasonable actions based upon an opinion of bond counsel to City, as may rescind or otherwise negate such action or omission.
- 29.4** CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, will not knowingly directly or indirectly use or permit the use of any proceeds of any revenue bonds or any other funds of City to take or omit to take any action that would cause any revenue bonds issued to be or become "arbitrage bonds" within the meaning of § 148(a) of the Code or to fail to meet any other applicable requirement of §§ 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Revenue Bonds.

**30. Indemnity.**

**30.1 Duty to Indemnify, Defend, and Hold Harmless.** To the fullest extent permitted by Law, CMAR will indemnify, defend, save and hold harmless City and its elected officials, officers, employees, agents, consultants, sub-consultants, representatives, and agents (individually, an "Indemnified Party"; collectively, the "Indemnified



Parties") for, from and against any and all third-party claims, demands, causes of action, damages (including compensatory, consequential, liquidated, and punitive), judgments, penalties, settlements and all other losses arising (collectively "Claim") from the performance or nonperformance of this Agreement by CMAR or of a Subcontractor, Supplier, or any other person or entity for whom CMAR is responsible and all attorneys' fees, consultants' fees, court costs (whether or not taxable by statute), and expenses incurred by each Indemnified Party.

**30.2 Extent of Indemnification.**

- (A) This indemnification is comprehensive and encompassing to the maximum extent permitted by Law and includes, but is not limited to, a Claim, just or unjust, of any kind, nature or description whatsoever, whether sounding in a tort, warranty, contract (including breach of this Agreement), equity, a statute, or any other theory of liability, and whether Claim is based on an alleged death, personal injury, sickness, conversion, breach of contract, breach of warranty (express or implied), breach of representation, defective work not remedied, lien, stop notice, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable Law, legal violations or other claimed damage.
- (B) This indemnity is in addition to and will not be deemed to limit any other indemnity given by CMAR.

**30.3 Defense of Indemnified Party.** CMAR will defend each Indemnified Party under this indemnity at CMAR's expense with counsel reasonably acceptable to the Indemnified Party, subject to the following:

- (A) The Indemnified Party has the opportunity to participate in the defense against the Claim;
- (B) If there are potential conflicting interests that would make it inappropriate for the same counsel to represent both CMAR and the Indemnified Party, or the Indemnified Party has defenses available to it that are not available to CMAR, then the Indemnified Party may select separate counsel to represent it at CMAR's expense;
- (C) No settlement or compromise can be effected by CMAR without the prior consent of the Indemnified Party; and
- (D) If CMAR does not, within fifteen (15) days after receipt of Notice from the Indemnified Party (or such shorter period of time as may be necessary to avoid a default on a Claim), give Notice to the Indemnified Party of CMAR's election to assume the defense of the Claim, the Indemnified Party has right to undertake, at the expense and risk of CMAR, the defense, compromise or settlement of the Claim.

**30.4 Negligence of Indemnified Party.** The foregoing obligations to indemnify, defend, save and hold harmless apply even if a Claim results in part from the negligence of an Indemnified Party, but, in such event, the ultimate liability of CMAR is only to the extent the Claim is found to have resulted from the negligence of CMAR or of any Subcontractor or Supplier.

- (A) In no event, however, will an Indemnified Party be indemnified for a Claim to the extent it results from the gross negligence or intentional conduct of

the Indemnified Party or the Indemnified Party's agents, employees or indemnity as provided in A.R.S. § 34-226.

- (B) An Indemnified Party's acting or failing to act in reliance on promises, representations or agreements made by CMAR in the performance of the Work may not be considered gross negligence or an intentional act or failure to act by the Indemnified Party.

### 31. Insurance Requirements.

**31.1 Insurance Obligation.** CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the Insurance Requirements attached as **Exhibit E**.

- (A) Force Placement. In the event CMAR fails, or any Subcontractor or Supplier fails, to maintain all insurance as provided in **Exhibit E**, City may, in addition to, and without prejudice to any other remedies available to it under this Agreement or applicable Law, on two (2) days' notice, purchase equivalent insurance.
- (B) Reimbursement for Force Placement. CMAR will reimburse City upon demand, or, at City's option, by way of withholding or off-setting amounts otherwise due to CMAR, for all expenses City incurs in connection with obtaining such insurance.

### 31.2 Risk of Loss.

- (A) CMAR bears the risk of loss to all materials, equipment, fixtures, supplies, or other Work element, whether in transit, stored off-site, or stored or housed on site, until such elements(s) have been incorporated into the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.
- (B) CMAR is solely responsible for insuring all such materials, equipment fixtures or other Work element from loss until such materials, equipment, fixtures or other elements have been physically incorporated in the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.

**31.3 Bonds.** Upon this Agreement's execution, CMAR must furnish Payment and Performance Bonds required under the provisions of A.R.S. § 34-608. The forms of the bonds will comply with the statute and be provided by a surety approved by City.

**31.4 Builder's Risk Insurance.** CMAR will furnish an all risk property insurance ("Builder's Risk") for the replacement value of the Work performed.

- (A) Form. The form of policy for this Builder's Risk coverage must be non-reporting, in completed value with no co-insurance, and valued at replacement cost with non-standard (broad) form all risk policy.
- (B) Coverage Value. The value utilized must be 100% of the completed value (including Contract Amendments) of the renovation, repairs or construction.

**31.5 Other Property Lost Coverage.** Insurance against loss of tools, equipment, or other items not incorporated into the Work, but required for the Work's performance, is CMAR's responsibility.

**32. Records.** CMAR must keep full and detailed accounts and exercise controls as may be reasonably necessary for the Work's proper financial management using generally accepted accounting methods and control systems reasonably satisfactory to City.

**32.1** City and its properly authorized representatives—who may be City employees or independent contractors as determined by City—will be afforded access at all times on reasonable advance notice to all CMAR's tangible and electronic records received or generated in connection with the Project, including, without limitation, records, books, ledgers, correspondence, instructions, drawings, receipts, contracts, subcontracts, vouchers, memoranda, electronic data bases and other electronically stored data and printouts thereof, and similar data relating to this Agreement ("Project Data").

- (A) Project Data availability will allow for audit, review, inspection and copying, at the Site or at CMAR's offices, if these offices are located in Maricopa County, Arizona.
- (B) Access will be available during regular business hours.
- (C) Project Data will be available for this inspection for at least one year after Final Completion of the Project or one year after the City has issued its Final Payment and resolved all disputes regarding payments under this Agreement, whichever is later.

**32.2** CMAR will be entitled to a reasonable charge for furnishing more than one hard copy of any document that is requested by City. CMAR will provide electronic copies to the City upon request.

**32.3** CMAR must preserve all such Project Data for a period of six (6) years after Final Payment, or longer where required by Law, and prior to destruction, Project Data will be delivered to City if City requests.

**32.4** CMAR must include these record keeping and record retention provisions in its subcontracts and contracts with Suppliers and require these parties to afford the City similar access for audit, inspection and copying, to all of the hard copy and electronically stored Project Data.

**33. Equal Employment Opportunity.**

**33.1 Non-Discrimination Policies.** CMAR must develop, consistently implement, and effectively maintain non-discrimination policies.

- (A) Duty to Not Discrimination. CMAR and CMAR's Subcontractors and Suppliers must not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.
- (B) Affirmative Action. CMAR must take affirmative action to attract diverse applicants, and ensure that the employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability. This affirmative action includes, but not be limited to, the following:

- (1) employment;
- (2) upgrading;

- (3) demotion or transfer;
- (4) recruitment or recruitment advertising;
- (5) layoff or termination;
- (6) rates of pay or other compensation; and
- (7) selection for training, including apprenticeship.

**33.2 Notices of Non-Discrimination Policies.** CMAR will post in conspicuous places, available to employees and applicants for employment, notices that set forth the non-discrimination policies and CMAR, its Subcontractors and Suppliers will, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

#### **34. Termination.**

**34.1 For Cause.** City has the right to terminate this Agreement without notice if CMAR:

- (A) Fails to maintain insurance required by this Agreement;
- (B) Violates any applicable Law regulating Hazardous Substances, occupational health, job safety, or environmental matters;
- (C) Jeopardizes the health, safety or welfare of persons or property;
- (D) Is Debarred by any governmental entity (in which event the termination will be effective as of the date of the sanction or debarment); or
- (E) Abandons the Work.

**34.2 For Breach.** If this Agreement is breached by CMAR, City may terminate this Agreement if CMAR fails to cure the breach within seven (7) calendar days after delivery of written notice specifying the breach or within such longer period of time as City may agree to in writing.

**34.3 Remedy after Termination.** If this Agreement is terminated, CMAR will immediately stop Work and remove its employees from the Project Site. City may, without prejudice to any other right or remedy available at Law or in equity, complete the Project through alternate means and in whatever manner City deems appropriate. City may also, at its election, take possession of and use the materials, equipment, tools and machinery of CMAR, a Subcontractor, or any Supplier to complete the Work otherwise required of the CMAR under this Agreement.

**Payment after Termination.** CMAR will have no right to any further payment until after City has completed the Project and determined the amount of its costs, and expenses and damages resulting from the termination.

- (A) If the unpaid balance of the Contract Sum exceeds the costs City incurs to complete the Project, plus other expenses and damages incurred by City resulting from CMAR's breach of this Agreement, City will pay CMAR the difference.
- (B) If the expense of completing the Project, plus City's damages and other expenses, exceeds such unpaid balance, CMAR will pay the difference to City upon demand.

**34.4 For Convenience.** City may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five (5) days written notice.

- (A) Notice of Termination for Convenience. Notice of termination for convenience:
  - (1) Will be provided no less than five (5) days before cessation of Work;
  - (2) Will specify the date of termination for that part of the Work; and
  - (3) Will direct the sequence and manner in which the termination will be implemented.
- (B) Payment after Termination for Convenience. Upon termination for convenience, City will pay CMAR the reasonable value of all Work performed prior to the date of termination, including costs necessarily incurred, reasonable costs of demobilization and shut down, and reasonable overhead and profit on Work performed, but excluding any profit or overhead on unexecuted Work.

**34.5 Abandonment.**

- (A) City's Right to Terminate. In the event CMAR, any Subcontractor or Supplier suspends or terminates its performance under this Agreement for any reason, City has the right to suspend or terminate all or any part of this Agreement and finish the suspended or terminated Work by whatever means City determines is appropriate.
- (B) Replacement. To prevent termination, CMAR must replace Subcontractor or Supplier within five (5) days by procurement of a Subcontractor or Supplier in a manner that is acceptable to City.
- (C) Withholding of Payments. If the abandoning Subcontractor or Supplier is not timely replaced, City may complete the Work at CMAR's expense, in which case:
  - (1) CMAR will not be entitled to receive any further payment hereunder until:
    - (a) The entire Project is complete; and
    - (b) All direct and indirect costs incurred by City to complete CMAR's Work, plus a reasonable allowance for City's overhead and profit, has been paid or offset against the GMP.
  - (2) Direct and indirect costs and the allowance for overhead and profit will apply against the Contract Price and, if the cost to complete the Project is greater than the amount due CMAR, CMAR will pay that difference immediately to City.

**35. Dispute Resolution.**

- 35.1** Each claim, controversy and dispute (each a "Dispute," collectively, "Disputes") will be initiated and resolved as provided in **Exhibit G**.
- 35.2** CMAR will continue performance of the Work pending resolution of any CMAR Claim, request for Equitable Adjustment or any Dispute, unless otherwise directed by City in writing.

**36. Notices.**

- 36.1** Any communication or notice required to be issued or given under this Agreement (each, a "Notice") will be effective only if:
- (A) Notice is in writing; and
  - (B) Delivered to the physical or electronic address given in Section 3 of this Agreement on a business day observed by City ("Business Day"):
    - (1) in person;
    - (2) by private express overnight delivery service (delivery service charges prepaid);
    - (3) certified or registered mail (return receipt requested); or
    - (4) electronic mail, if confirmation of receipt is given and received.
- 36.2** A notice will be deemed delivered to the party:
- (A) As of the date of receipt if received before 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement; or
  - (B) As of the next Business Day if received after 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement.
- 36.3** The party giving Notice will have the burden of proof as to the time and place of delivery.
- 36.4** A party may only change its representative or the information for giving Notice by giving Notice of the change to the other party in writing at least ten (10) days prior to the date such change becomes effective.
- 37. Miscellaneous.**
- 37.1 Contract Amendment.** The parties may, at any time, modify this Agreement by written agreement ("Contract Amendment") signed by both City and CMAR. The Contract Amendment shall become effective and an enforceable part of this Agreement upon its execution.
- 37.2 Integration.** This is the entire agreement of City and CMAR, and it supersedes all negotiations and any prior agreements between them relating to the Work and the Project. No other documents are included unless incorporated herein by reference.
- 37.3 Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
- 37.4 Successor and Assigns.** This Agreement will inure to the benefit of and be binding on the parties' successors and assigns.
- 37.5 Rights and Remedies.**
- (A) All rights and remedies provided in this Agreement are cumulative and the exercise or assertion of one or more rights or remedies will not affect any other rights or remedies allowed by Law or equity or this Agreement.
  - (B) Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement's provisions, or with respect to any occurrence, shall operate as a waiver with respect to such provision or occurrence thereof.

(C) No single or partial exercise of any right, remedy, power or privilege precludes any other or further exercise of the same or of any right, remedy, power or privilege.

- 37.6 No Waiver.** No waiver is effective unless it is in writing and is signed by the party asserted to have granted such waiver.
- 37.7 Severability.** If any provision of this Agreement is held by any court to be void or unenforceable, that provision will not affect the validity of the remaining provisions of this Agreement.
- 37.8 Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification provision, insurance requirement, and every other right, remedy and responsibility of City or CMAR under this Agreement will survive the Project's completion, or this Agreement's earlier termination.
- 38. Conditions Precedent.** This Agreement's effectiveness, and City's obligations hereunder, are contingent upon City's written confirmation to CMAR that each of the following contingencies have been fulfilled:
- 38.1 Funding.** City has allocated funds specifically for the purpose of the Project or has secured financing it deems satisfactory for the Project.
- 38.2 Approval.** This Agreement has been approved by the Glendale City Council.
- 39. Exhibits.** The following exhibits are incorporated by this reference:

<b><u>Exhibit</u></b>	<b><u>Title</u></b>
A	The Project
B	The Work; Key Personnel
C	GMP Schedule
D	Project Schedule
E	CMAR's Insurance Requirements
F	Forms of Payment and Performance Bonds
G	Dispute Resolution Procedures

IN WITNESS WHEREOF, City and CMAR enter into this agreement and it shall become effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date").

**CITY OF GLENDALE**

\_\_\_\_\_  
Kevin R. Phelps, City Manager

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

Attestation:

\_\_\_\_\_  
Julie K. Bower, City Clerk (SEAL)

Achen-Gardner Construction, LLC,  
a Arizona Limited Liability Company Corporation

By: \_\_\_\_\_

John Walstrom

Its: President

Registrar of Contractors License: 261745

Date: \_\_\_\_\_

2-21-17



## INDEX OF EXHIBITS

### GMP 2 PROPOSAL (12/5/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100

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- **EXHIBIT A** THE PROJECT - PROJECT DESCRIPTION
- **EXHIBIT B** THE WORK
  - **EXHIBIT B.1** PROPOSAL LIST OF DOCUMENTS
    - GMP 2 Area Exhibit (1 page)
    - 100% Plan Review and Quantity Verification GMP 2 dated 11-2-16 (1 page)
  - **EXHIBIT B.2** PROJECT CONSTRUCTION PHASE KEY PERSONNEL
- **EXHIBIT C** GMP PROPOSAL SCHEDULE
  - **EXHIBIT C.1** GMP PROPOSAL SCHEDULE SUMMARY
  - **EXHIBIT C.1.1** GMP PROPOSAL SCHEDULE SUMMARY - BY AREA
  - **EXHIBIT C.2.1** GMP SCHEDULE OF VALUES (59<sup>th</sup> Ave. & Royal Palms Area)
  - **EXHIBIT C.2.2** GMP SCHEDULE OF VALUES (67<sup>th</sup> Ave. & Royal Palms Area)
  - **EXHIBIT C.3** BID ITEM CLARIFICATIONS, ASSUMPTIONS, INCLUSIONS/EXCLUSIONS
  - **EXHIBIT C.3.1** SUBCONTRACTOR/SUPPLIER RECOMMENDATIONS (59<sup>th</sup> Ave. & Royal Palms)
  - **EXHIBIT C.3.2** SUBCONTRACTOR/SUPPLIER RECOMMENDATIONS (67<sup>th</sup> Ave. & Olive)
- **EXHIBIT D** PROJECT SCHEDULE

Exhibit A  
THE PROJECT

## **EXHIBIT A – PROJECT DESCRIPTION**

### **GMP 2 PROPOSAL (12/5/16)**

#### **City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk COG Project Number 131424 / Achen-Gardner No. 3493100**

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The City has identified multiple locations throughout the City where the existing waterlines have deteriorated, causing operational issues. The new waterline improvements include the replacement of aged ACP water lines, with the installation of new ductile iron pipe (DIP), fire hydrants, valves, service lines and other associated accessories. These improvements are being constructed under multiple GMPs. GMP 2 includes the following Project Areas including the approximate descriptions, sizes and lengths, as listed below:

**QS 26-15: 59<sup>th</sup> Ave and Royal Palms** (Replace existing ACP with new DIP; Approximately 3,365 L.F. of 12" DIP, 739 L.F. of 8" DIP, 855 L.F. of 6" DIP, and associated valves, services, hydrants, and related work)

**QS 26-13: 67<sup>th</sup> Ave. and Olive** ((Replace existing ACP with new DIP; Approximately 716 L.F. of 12" DIP and associated valves, services, hydrants, and related work)

*(Note: See GMP 2 Area Exhibit included as Attachment to EXHIBIT B.1 for locations and associated Plan Sheet Numbers.)*

**EXHIBIT B**  
**THE WORK**  
**KEY PERSONNEL**

(See Attached)

## **EXHIBIT B.1 – PROPOSAL LIST OF DOCUMENTS**

### **GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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**GMP 2 is based on the following documents:**

- Stantec Engineers 100% Plan Submittal; titled Glendale, Arizona / Waterline Improvements – GMP 2 / Various Locations / Project # 131424, dated 10-28-16 and sealed 10-28-16 (20 pages).
- 100% Plan Review and Quantity Verification GMP 2 dated 11-2-16 (Copy attached to this EXHIBIT B.1). This summary details field verified changes that have been identified and incorporated into GMP 2 - EXHIBIT C.2.1, Schedule of Values. These changes will be incorporated into final as-builts.
- Ninyo & Moore Geotechnical Evaluation – Water Line Improvements Various Locations, Prepared for Stantec dated 02-24-2016.
- Ninyo & Moore Geotechnical Evaluation Addendum 1– Water Line Improvements Various Locations, Prepared for Stantec dated 03-18-2016
- MAG Specifications and City of Glendale supplemental specifications and details.
- Achen-Gardner's Design Phase Proposal and associated Design Phase Services Contract for this project, COG Project No. 131424 dated 5-10-16.
- City of Glendale Construction Manager at Risk, Construction Manager at Risk Agreement for GMP 1 Construction Services dated 6-28-16.
- Achen-Gardner's GMP 2 Project Area Exhibit (1 page)(Attached)
- 100% Plan Review and Quantity Verification GMP 2 dated 11-2-16 (1 page)(Attached)
- Achen-Gardner's GMP 2 Proposal including Exhibits dated December 5, 2016
- Achen-Gardner's GMP 2 Subcontractor/Supplier Recommendations dated 12-5-16 and here in incorporated to GMP 2 by reference (See GMP 2 Exhibit C3 Summaries).

*(Note: In the event of a conflict between the terms of this GMP 2 Proposal and any of the contract documents listed in this EXHIBIT B.1, the terms and conditions of this GMP 2 Proposal dated 12-5-16 shall control.)*



		100 % Plan Review and Quantity Varification GMP 2					DPB 11-2-16
	Station	Description	Plan Item	Qty	Unit	AGC Item	Comments
<b>Page C300</b>							
	1) 23+54RT	ARV	55	1	EA	3205	New - Move to NE corner
		Paving	70	5	SY	3270	
		R/R curb	71	8	LF	3280	
	2) 25+13RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	3) 25+95RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	4) 22+37LT	Abandon Valve	5	1	EA	3340	New item
	5) 21+98RT	3/4 Service	N/A	50	LF	3210	Page qty missing this item
		Paving	70	22	SY	3270	Page qty missing this item
<b>Page C301</b>							
	1) 26+86RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	2) 29+24Rt	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	3) 30+30RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	4) 31+22RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	5) 27+60LT	8" waterline	2	10	LF	3090	Lateral for new building
		R/R Valley Gutter	73	50	SF	3300	new driveway
		R/R curb	71	10	LF	3280	
<b>Page C302</b>							
	1) 31+68LT	2" Service	?	18	LF	3230	Actual size
		1" Service	50	-18	LF	3210	Bid as 1"
	2) 32+08RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	3) 33+21RT	3/4 Service	N/A	65	LF	3210	change in size - bid as 1" (#50)
	4) 35+85LT	2" Service	N/A	18	LF	3230	Actual size
		1" Service	50	-18	LF	3210	Bid as 1"
<b>Page C303</b>							
	1) 38+70RT	1" Service	50	45	LF	3210	New building AZ Dental
		Paving	70	20	SY	3270	
		R/R curb	71	10	LF	3280	
	2) 40+84RT	R/R Valley Gutter	73	125	SF	3300	Added Pavers and valley gutter
<b>Page C304</b>							
	1) 41+71RT	3/4 Service	N/A	50	LF	3210	change in size - bid as 1" (#50)
	2) 42+50RT	R/R Valley Gutter	73	50	SF	3300	Added Driveway
	3) 42+61LT	R/R Valley Gutter	73	60	SF	3300	Added Driveway
	4) 45+24LT	4" DIP	4				Actual location is 44+30
	5) 45+78LT	R/R Valley Gutter	73	90	SF	3300	Added Driveway
<b>Page C305</b>							
	1) 47+52LT	3/4 Service	N/A	40	LF	3210	change in size - bid as 1" (#50)
<b>Page C306</b>							
	1) 54+59LT	3/4 Service	N/A	20	LF	3210	change in size - bid as 1" (#50)
	2) 54+61LT	3/4 Service	N/A	18	LF	3210	change in size - bid as 1" (#50)
	3) 54+62LT	3/4 Service	N/A	18	LF	3210	change in size - bid as 1" (#50)
	4) 54+65LT	3/4 Service	N/A	18	LF	3210	Existing not shown
	5) 54+68LT	3/4 Service	N/A	10	LF	3210	Existing not shown
<b>Page C312</b>							
	1) 11+22LT	3/4 Service	N/A	18	LF	3210	change in size - bid as 1" (#50)
<b>Page C313</b>							
	1) 13+98RT	R/R Valley Gutter	73	25	SF	3300	Added colored Concrete
	2) 14+87RT	R/R Valley Gutter	73	100	SF	3300	Added Driveway
<b>Page C320</b>							
	1) 45+76	8" Fittings	N/A	4	EA	3100	Dip added at SRP

**EXHIBIT B.2 – PROJECT CONSTRUCTION PHASE KEY PERSONNEL**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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**Achen-Gardner's Project key personnel for the construction phase are as follows:**

Dan Broderick – Project Manager

Mark Gierszewski – Project Superintendent

**Project Construction Phase Support Team Members:**

Mike Gewecke – General Wet Utility Superintendent

Dan Spitz – Design Phase Services Manager/Principal

Andy Mortensen – Lead Estimator



**EXHIBIT C**

GMP PROPOSAL SCHEDULE

(See Attached)

## **EXHIBIT C.1 – GMP PROPOSAL SCHEDULE SUMMARY**

### **GMP 2 PROPOSAL (12/5/16)**

#### **City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk COG Project Number 131424 / Achen-Gardner No. 3493100**

CONTRACTOR will complete the Work in accordance with the Construction Documents and accept in full payment for the Work items listed below the following GMP Approved Prices, as detailed on Exhibits C.2.1 and C.2.2 and qualified on other GMP 2 Proposal Exhibits:

Item	Percent	Not-to-Exceed Price (\$)
Cost of the Work	71.0%	1,964,202.21
General Conditions	5.5%	152,780.63
Bonds	0.8%	23,074.81
Insurance	1.3%	34,612.67
Sales Tax	4.6%	127,865.88
Contractors Fee	6.9%	190,528.46
OWNER Contingency *	7.2%	200,000.00
CONTRACTOR Contingency *	2.6%	73,000.00
GMP	100%	\$2,766,064.66
NOTE: Percentages are calculated based on the GMP Total.		

\* Owner Contingency and Contractor Contingency include standard mark-up and fee structure.

**Guaranteed Not-To-Exceed Maximum Price or GMP** (The sum of the computed totals listed in the GMP Proposal Schedule and detailed in CONTRACTOR's GMP Proposal dated December 5, 2016 and referenced in the GMP 2 Exhibits in the Construction Contract):

**\$ 2,766,064.66**

**Two million, seven hundred sixty-six thousand, sixty-four dollars and sixty-six cents.**

THE GMP PROPOSAL IS BASED UPON ESTIMATED QUANTITIES, CITY APPROVED UNIT PRICES INCLUDED ON EXHIBITS C.2.1 and C.2.2, AND ALLOWANCES. IF THERE IS AN ERROR IN THE GMP PROPOSAL OR COMPUTED TOTALS BY THE CONTRACTOR IT SHALL BE CHANGED AND THE UNIT PRICES SHALL GOVERN.

OWNER shall pay CONTRACTOR for completion of the Work based on actual Measured Quantities and agreed to unit prices in accordance with the City approved Schedule of Values (re: Proposal Exhibits C2.1 and C.2.2). It is understood that these individual City approved unit prices may include the cost associated with the risk of delivering the work in accordance with Section 5 (Construction Manager At Risk Agreement – Construction Contract) – Guaranteed Maximum Price and associated GMP Proposal Clarifications (re: Proposal Exhibit C3). CONTRACTOR is not responsible for the adequacy of OWNER Contingency Allowance amount.

**EXHIBIT C.1.1 – GMP PROPOSAL SCHEDULE SUMMARY - BY AREA**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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The included SUMMARY – BY AREA details the apportioned GMP 2 price by work area. This information is summarized in EXHIBIT C.1

**EXHIBIT C.1.1**

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk

COG Project Number 131424 / Achen-Gardner No. 3493100

**GMP 2 Proposal Schedule Summary - By Area (12-5-16)**

GMP 2 TOTAL			59th & Royal Palms		67th and Olive	
ITEM	PERCENT	NOT-TO-EXCEED PRICE (\$)	PERCENT	NOT-TO-EXCEED PRICE (\$)	PERCENT	NOT-TO-EXCEED PRICE (\$)
Cost of the Work	71.0%	1,964,202.21	72.9%	1,652,770.90	62.5%	311,431.31
General Conditions	5.5%	152,780.63	4.5%	101,853.75	10.2%	50,926.88
Bonds	0.8%	23,074.81	0.8%	19,125.11	0.8%	3,949.70
Insurance	1.3%	34,612.67	1.3%	28,688.11	1.2%	5,924.56
Sales Taxes (Includes Tax Exempt Credit)	4.6%	127,865.88	4.7%	105,760.17	4.4%	22,105.71
Contractor's Fee	6.9%	190,528.46	7.0%	157,916.22	6.5%	32,612.24
OWNER Contingency	7.2%	200,000.00	6.6%	150,000.00	10.0%	50,000.00
CONTRACTOR Contingency	2.6%	73,000.00	2.3%	51,653.00	4.3%	21,347.00
GMP Total	100%	\$ 2,766,064.66	100%	\$ 2,267,767.26	100%	\$ 498,297.40
NOTE: Percentages are calculated based on the GMP Total						

**EXHIBIT C.2.1 – GMP SCHEDULE OF VALUES (59<sup>th</sup> Ave. & Royal Palms Area)**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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See following Schedule of Values Spreadsheet dated 11-23-16 / Revised 12-5-16 (2 pages).

11/23/16 REV.

## EXHIBIT C.2.1

12/05/2016

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Copy of GLENDALE 59TH ROYAL PALM TO S OF

\*\*\* Kevin Nunez

## BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Status - Rnd</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
3010	MOBILIZATION		1.000	JB	16,096.04	16,096.04
3015	GENERAL CONDITIONS		3.000	MO	33,951.25	101,853.75
3020	SURVEY		1.000	JB	6,500.00	6,500.00
3030	MATERIAL TESTING QA/QC (ALLOWANCE)		17,293.000	US	1.00	17,293.00
3040	SWPPP		1.000	JB	7,550.00	7,550.00
3045	DUST CONTROL/CONSTRUCTION WATER		1.000	JB	6,795.00	6,795.00
3050	TRAFFIC CONTROL		1.000	JB	48,180.00	48,180.00
3060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		111,488.000	US	1.00	111,488.00
3065	TRAFFIC PLATES		1.000	JB	22,545.55	22,545.55
3067	LOCATE/EXPOSE UTILITIES		1.000	JB	61,414.70	61,414.70
3070	12" DIP WATERLINE		3,365.000	LF	113.55	382,095.75
3080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		17.000	EA	903.59	15,361.03
3090	8" DIP WATERLINE		749.000	LF	182.07	136,370.43
3100	8" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		78.000	EA	687.93	53,658.54
3110	6" DIP WATERLINE		855.000	LF	103.38	88,389.90
3120	6" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		14.000	EA	345.75	4,840.50
3130	4" DIP WATERLINE		51.000	LF	180.74	9,217.74
3140	4" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		6.000	EA	315.19	1,891.14
3150	12" GATE VALVE W/ BOX & COVER		15.000	EA	2,663.59	39,953.85
3160	8" GATE VALVE W/ BOX & COVER		18.000	EA	1,913.52	34,443.36
3170	6" GATE VALVE W/ BOX & COVER		8.000	EA	1,299.30	10,394.40
3180	4" GATE VALVE W/ BOX & COVER		2.000	EA	1,431.64	2,863.28
3190	FIRE HYDRANT ASSEMBLY (INCLUDING VALVE & TEE)		14.000	EA	7,279.45	101,912.30
3200	CONNECT TO EXISTING WATERLINE		19.000	EA	2,320.75	44,094.25
3205	1" AIR RELEASE VALVE		1.000	EA	5,479.09	5,479.09
3210	3/4" & 1" WATER SERVICE		1,066.000	LF	112.71	120,148.86
3230	2" WATER SERVICE		84.000	LF	124.06	10,421.04
3250	WATER/SEWER CROSSING		6.000	EA	1,834.71	11,008.26
3270	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		3,071.000	SY	55.64	170,870.44
3280	R/R CURB & GUTTER		261.000	LF	28.69	7,488.09
3290	R/R SIDEWALK		1,100.000	SF	14.82	16,302.00
3300	R/R VALLEY GUTTER		620.000	SF	27.56	17,087.20
3330	REMOVE HYDRANT		14.000	EA	800.99	11,213.86
3340	ABANDON WATER VALVE		35.000	EA	251.92	8,817.20
3350	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	JB	6,183.00	6,183.00
3360	REMOVE EXSITING CONCRETE PAVEMENT		8,015.000	SF	5.54	44,403.10

CONSTRUCTION SERVICES COST 59TH AVE &amp; ROYAL PALMS

\$1,754,624.65

11/23/16 REV.

EXHIBIT C.2.1

12/05/2016

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Copy of GLENDALE 59TH ROYAL PALM TO S OF

\*\*\* Kevin Nunez

BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Status - Rnd</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
5005	FEE 9%		1.000	LS	157,916.22	157,916.22
RUNNING SUBTOTAL 1						\$1,912,540.87
5007	INSURANCE 1.5%		1.000	LS	28,688.11	28,688.11
5010	BOND 1%		1.000	LS	19,125.11	19,125.11
RUNNING SUBTOTAL 2						\$1,960,354.09
5020	SALES TAX 5.98%		1.000	LS	117,229.17	117,229.17
5030	SALES TAX CREDIT		1.000	LS	-11,469.00	-11,469.00
RUNNING SUBTOTAL 3						\$2,066,114.26
5040	CONTRACTOR CONTIGENCY 2.5%		1.000	LS	51,653.00	51,653.00
5050	OWNER CONTIGENCY		1.000	LS	150,000.00	150,000.00
Bid Total						\$2,267,767.26

**EXHIBIT C.2.2 – GMP SCHEDULE OF VALUES (67<sup>th</sup> Ave. & Royal Palms Area)**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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See following Schedule of Values Spreadsheet dated 11-23-16 / Revised 12-5-16 (2 pages).



11/23/16 REV.

## EXHIBIT C.2.2

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Copy of COG WL IMPROVEMENTS - 67TH &amp; OLI

\*\*\* Kevin Nunez

## BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Status - Rnd</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
4010	MOBILIZATION		1.000	JB	11,950.65	11,950.65
4015	GENERAL CONDITIONS		1.500	MO	33,951.25	50,926.88
4020	SURVEY		1.000	JB	616.00	616.00
4030	MATERIAL TESTING QC (ALLOWANCE)	U	4,560.000	US	1.00	4,560.00
4040	SWPPP		1.000	JB	5,900.00	5,900.00
4045	DUST CONTROL/CONSTRCUTION WATER		1.000	JB	4,925.00	4,925.00
4050	TRAFFIC CONTROL		1.000	JB	10,999.90	10,999.90
4060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		23,520.000	US	1.00	23,520.00
4065	TRENCH SAFETY/TRAFFIC PLATES		1.000	JB	16,161.65	16,161.65
4067	LOCATE/EXPOSE UTILITIES		1.000	JB	12,992.72	12,992.72
4070	12" DIP WATERLINE		716.000	LF	160.18	114,688.88
4080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		22.000	EA	755.47	16,620.34
4110	12" GATE VALVE W/ BOX & COVER		4.000	EA	3,030.93	12,123.72
4120	CONNECT TO EXISTING WATERLINE		4.000	EA	2,540.09	10,160.36
4130	1" AIR RELEASE VALVE		3.000	EA	5,517.56	16,552.68
4140	WATER/SEWER CROSSING		4.000	EA	2,161.59	8,646.36
4150	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		497.000	SY	69.60	34,591.20
4160	R/R CURB & GUTTER		10.000	LF	24.50	245.00
4170	ABANDON WATER VALVE		6.000	EA	245.51	1,473.06
4175	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	JB	4,703.80	4,703.80

CONSTRUCTION SERVICES COST - 67TH &amp; OLIVE

\$362,358.19

4210	FEE 9%		1.000	LS	32,612.24	32,612.24
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RUNNING SUBTOTAL 1

\$394,970.43

4230	INSURANCE 1.5%		1.000	LS	5,924.56	5,924.56
4250	BONDS 1%		1.000	LS	3,949.70	3,949.70

RUNNING SUBTOTAL 2

\$404,844.69

4260	SALES TAX 5.98%		1.000	LS	24,209.71	24,209.71
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11/23/16 REV.

EXHIBIT C.2.2

12/05/2016

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Copy of COG WL IMPROVEMENTS - 67TH & OLI

\*\*\* Kevin Nunez

BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Status - Rnd</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
4265	SALES TAX CREDIT		1.000	LS	-2,104.00	-2,104.00
RUNNING SUBTOTAL 3						\$426,950.40
4270	CONTRACTOR CONTIGENCY 5.0%		1.000	LS	21,347.00	21,347.00
4275	OWNER CONTIGENCY		1.000	LS	50,000.00	50,000.00
Bid Total =====>						\$498,297.40

## **EXHIBIT C.3 – BID ITEM CLARIFICATIONS, ASSUMPTIONS, INCLUSIONS/EXCLUSIONS**

### **GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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#### **General Exclusions & Clarifications**

- 1) In the event of a conflict. The terms, clarifications, and/or assumptions included in this Exhibit and/or any of the other GMP 2 Proposal Exhibits shall control and take precedence over all contract agreement, plans, specifications, standard details, and general conditions articles and/or provisions.
- 2) Re: CMAR's Professional Liability Coverage – CM@R excludes Professional Liability Coverage as it relates to this Construction Phase Contract.
- 3) Re: Subcontractor Bonds –Achen-Gardner considers all Subcontractors as minor and will not require these Bonds regardless of their contract amount. See last page of this GMP Exhibit C.3 for associated Subcontractor and Supplier Recommendations.
- 4) Re: Existing Utilities - GMP excludes all costs associated with removing, replacing, and/or relocating any existing buried and/or overhead utilities not detailed to be in the plans (re: Exhibit C) or specifically defined on Exhibit B. Achen-Gardner does accept responsibility for protecting any existing utilities detailed on the project plans and those that are properly located (i.e. Bluestake) (re: GMP Exhibit B.1). Achen-Gardner reserves the right to utilize Contractor Contingency for those detailed on the plans and be compensated for those not shown on the plans but properly located through Owner Contingency or Owner change order.
- 5) Re: GMP Schedule and Weather Delays - For the purpose of this contract, adverse weather conditions such as average days of rain per month, is assumed to be 1 each per month. A weather-related delay may be claimed on days where rainfall did not actually occur, but follows a day of heavy rain that has impacted the schedule. That is, the first four (4) days of weather-related delays will not result in delays to the project schedule. If the project experiences additional weather-related delays beyond this amount, the Contractor shall be entitled to a commensurate extension of time associated with the delays and/or a GMP Price adjustment for additional costs associated with but not limited to General Conditions, accelerations, etc.
- 6) Re: Other Contractor Coordination –CMAR agrees to make a good faith effort in coordinating its work with that of "other" Contractors working w/i the project limits. Achen-Gardner reserves the right to request Owner change order compensation for any additional work not anticipated that results from any of the above conditions.

- 7) Re: GMP Exhibit D, Schedule - Proposed Project Schedule, excludes logic associated with acquiring temporary construction easements or permanent right-of-way of any kind. This GMP Proposal assumes ALL right-of-way and easements required to construct the Project have been or will be acquired by Owner in time to maintain the Project Schedule as presented herein.
- 8) GMP excludes all costs associated with City of Glendale and/or other public agency permit & plan review fees, QA (i.e. inspection) costs, impact fees, utility company fees and/or any other permit or fee not detailed in Exhibit C and related Exhibits.
- 9) Re: Schedule of Values – This Proposal’s GMP will be administered as a Measured Quantity x City approved Unit Price type contract. Final contract price/payout will be based on field measured final completed quantities, City approved unit prices (see Exhibits C.2.1 and C.2.2), applied fee structure (re: Items 5005 – 5030 and Items 4210 - 4265), approved contractor contingency utilization, and approved change orders guaranteed not-to-exceed the GMP 2 amount (see GMP SUMMARY EXHIBIT C.1). It is understood that these individual City approved unit prices, including items with a Unit of 1/Job (JB), include the cost associated with the risk of delivering the work and are not subject to adjustment unless mutually agreed to.
- 10) Re: Allowance Items – Work Items that have been designated “Allowance” are a best estimate of the cost of work for which a scope has yet to be confirmed/determined or a Unit Price finalized. The Allowance Quantity and Unit Price values are not guaranteed, and are subject to adjustment by mutual agreement between the City and CMAR as the scope and/or price is confirmed. Associated increases/decreases in cost will be funded/credited from/to the Contractor Contingency Items (re: Items 5040 and 4270).
- 11) Re: Contractor Contingency – Estimate of Contractor Contingency has been set at \$73,000.00 (re: Items 5040 and 4270). Achen-Gardner reserves the right to utilize Contractor Contingency funds for increased costs associated with, but not limited to, material cost escalations and delays and/or decreased efficiencies. Reimbursement under this Item will be based on existing City approved unit prices or documented time and material costs for non-standard scopes of work. Use of these funds is subject to mutual agreement between the City and Achen-Gardner.
- 12) Re: Scope of Work - It is understood that the documents listed (i.e. plans, specifications, etc.) have been used to prepare this GMP. Item “Descriptions” and “Units” (or unit of measure) included in Exhibits C.2.1 and C.2.2 shall serve to assist in the clarification of and definition of the scope of work included under each Item of Work (i.e. “Bid Item”). The cost associated with any changes, revisions, additions and/or deletions directed by the City will be compensated for and funded through an Owner Contingency or Owner Change Order as mutually agreed to by all parties.

- 13) Re: Hazardous Materials – GMP proposal excludes any and all costs associated with handling and/or disposing of hazardous wastes not introduced by Achen-Gardner.
- 14) Re: Hard Dig – GMP proposal excludes any rock excavation requiring blasting and/or hydraulic breakers of any kind.
- 15) Re: Subcontractor and Supplier pricing - GMP based on Recommended Awarded Subcontractor and Supplier resource values and associated proposal/quote clarifications/inclusions/exclusions/qualifications included in GMP 2 Subcontractor and Supplier Selection Recommendations (See Exhibits C.3.1 and C.3.2).
- 16) Re: Work Hours – This GMP is based on working 8 hour per shift (work day) Monday – Friday during daylight hours. Work hours will be scheduled weekly with the City and its representatives. To minimize disruption of water service it may be necessary to make the new connections at night. Achen-Gardner's price includes this work and will coordinate with City staff.

**Bid Item Scope Exclusions & Clarifications**

- 1) All waterline tie-ins to be disinfected by swab method. Even if the swab method is used, all testing will still be per COG and MAG requirements. Achen-Gardner understands all tests must be completed and passed.
- 2) All waterline tie-ins to be pressure tested by visual inspection.
- 3) Pricing is based on the 2015 City of Glendale Standard Details and Specifications.
- 4) Price excludes asphalt fog seal/primecoat/seal coat.
- 5) Price excluded slurry seal and micro seal.
- 6) Asphalt pavement replacement shall be paid by the square yard and measured quantity of asphalt installed. MAG pay width does not apply.
- 7) Price excludes any temporary water or sewer service of any kind. If temporary water or sewer service is required due to the fault of AG it should be provided at no additional cost to the City.
- 8) Price excludes any rubberized asphalt.

- 9) Price assumes traffic can be restricted to one-lane north and south-bound or east and westbound. Street closures and left turn lane closures at signalized intersections may be required. These will be planned and scheduled in cooperation with City staff. Temporary traffic signals are not anticipated and will be paid for under Owner's Contingency if required.
- 10) Price assumes traffic control can be left up 24 hours per day.
- 11) All ductile iron fitting joints are restrained by mega-lug type restraint. All ductile iron pipe joints are restrained by either Field-Lok® or Fastite® type gaskets.
- 12) Price excludes the furnishing of any water meters. New water meters, if required, will be furnished by City or acquisition funded through Owner Contingency. CMAR price includes installation/connection of meters and boxes.
- 13) Price includes quality assurance and quality control testing (re: Allowance Items 3030 and 4030). This scope will be co-managed by CMAR and City Construction Administration and Inspection Team. Selection of firm will be mutually agreed to.
- 14) Price includes the removal and replacement of any existing decomposed granite required for the installation of the waterline, hydrants, or services. Price excludes furnishing or installing any other landscaping.
- 15) Productions are based on a minimum of 8-hour work days excluding the time to set and remove barricades. It is assumed that the barricades can be set up and left in place to allow for 8-hours of continuous work before beginning the removal of the barricades.
- 16) Price excludes the cost of any specialty signs required.
- 17) Price excludes any removal of any existing concrete pavement.
- 18) Price excludes furnishing and installing all 30-inch stainless repair couplings indicated on the drawings. Please see Water Construction Note 62 on Drawing C203. The exiting services are believed to be connected to the existing 12-inch waterline South of the Existing 30-inch water transmission main.
- 19) Price assumes that all equipment can be left on the street overnight.

- 20) Price excludes public outreach and communication services. Price includes communication and cooperation with Stantec and its sub-consultant (MakPro Services) in the execution of this scope of work.
- 21) Pavement replacement will be Type A and at the thicknesses detailed in Ninyo & Moore's Geotechnical Report. T-top detail is excluded.
- 22) Unit prices for General Conditions (3015 & 4015) and Mobilization (3010 & 4010) items are subject to adjustment based final project phasing and sequencing (e.g. constructed concurrently, end-to-end, or non-sequentially). Adjustments are subject to mutual agreement between City and Contractor.

**EXHIBIT C.3.1**  
**SUBCONTRACTOR/SUPPLIER RECOMMENDATIONS (59<sup>th</sup> Ave. & Royal Palms)**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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**Subcontractor/Supplier Recommendation Clarification, Inclusions, and Exclusions**

GMP 2 is based on the following recommended Subcontractors and Suppliers for the 59<sup>th</sup> Ave. and Royal Palms work area. Refer to GMP 2 Subcontractor/Supplier Selection Recommendation and Supporting Documentation dated 12-5-16 ("Recommendations"); these are incorporated herein by reference. These Recommendations are consistent with the project's Subcontractor /Supplier Selection Plan and GMP 1 qualifications and price selection process and recommendations and represent a confirmation of the previous GMP 1 pricing. Unless otherwise noted or defined in GMP 2 Exhibits, GMP 2 Proposal is subject to all recommended Subcontractor and Supplier quotations and associated inclusions, exclusions, clarifications, and qualifications included in the GMP 2 Recommendations dated 12-5-16.

Redi Mix Concrete and Slurry Material Supplier (\$73,364.53)(2)	Arizona Metro Mix
Aggregate Materials Supplier (\$63,941.78)(2)	Cemex, Inc.
Construction Survey and As-Built Service (\$6,500.00)	EPS Group
Waterline Materials Supplier (\$245,468.56)(2)	Ferguson
Adjustment Subcontractor (\$18,525.00)	Specialty Contracting
Asphalt Materials Supplier (\$70,844.80)(2)	Vulcan Materials
Traffic Control Rental and Services (1)	Trafficade Services

**Notes:**

- (1) Project's traffic control item (Bid Item No. 4050) includes Achen-Gardner labor and equipment to complete daily maintenance and moves as well as Trafficade's equipment rental, labor, and equipment costs to furnish devices and deliver, pick up, and maintain as required. 1 Job (JB) unit price has been developed based on previous experience.
- (2) These material supply cost are incorporated into City approved unit prices included on EXHIBIT C.2.1; these City approved unit prices include Contractor's responsibility for risk related to material supplier over and underruns.



**EXHIBIT C.3.2**  
**SUBCONTRACTOR/SUPPLIER RECOMMENDATIONS (67<sup>th</sup> Ave. & Olive)**

**GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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**Subcontractor/Supplier Recommendation Clarification, Inclusions, and Exclusions**

GMP 2 is based on the following recommended Subcontractors and Suppliers for the 67<sup>th</sup> Ave. and Olive work area. Refer to GMP 2 Subcontractor/Supplier Selection Recommendation and Supporting Documentation dated 12-5-16 ("Recommendations"); these are incorporated herein by reference. These Recommendations are consistent with the project's Subcontractor /Supplier Selection Plan and GMP 1 qualifications and price selection process and recommendations and represent a confirmation of the previous GMP 1 pricing. Unless otherwise noted or defined in GMP 2 Exhibits, GMP 2 Proposal is subject to all recommended Subcontractor and Supplier quotations and associated inclusions, exclusions, clarifications, and qualifications included in the GMP 2 Recommendations dated 12-5-16.

Redi Mix Concrete and Slurry Material Supplier (\$19,522.50)(2)	Arizona Metro Mix
Aggregate Materials Supplier (\$7,852.10)(2)	Cemex, Inc.
Construction Survey and As-Built Service (\$616.00)	EPS Group
Waterline Materials Supplier (\$40,493.00)(2)	Ferguson
Adjustment Subcontractor (\$1,300.00)	Specialty Contracting
Asphalt Materials Supplier (\$5,151.11)(2)	Vulcan Materials
Traffic Control Rental and Services (1)	Trafficade Services

**Notes:**

- (1) Project's traffic control item (Bid Item No. 4050) includes Achen-Gardner labor and equipment to complete daily maintenance and moves as well as Trafficade's equipment rental, labor, and equipment costs to furnish devices and deliver, pick up, and maintain as required. 1 Job (JB) unit price has been developed based on previous experience.
- (2) These material supply cost are incorporated into City approved unit prices included on EXHIBIT C.2.2; these City approved unit prices include Contractor's responsibility for risk related to material supplier over and underruns.

**EXHIBIT D**  
**PROJECT SCHEDULE**  
**SCHEDULE UPDATES**

(See Attached)

## **EXHIBIT D – PROJECT SCHEDULE**

### **GMP 2 PROPOSAL (12/5/16)**

**City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk  
COG Project Number 131424 / Achen-Gardner No. 3493100**

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**NOTE: This GMP is based on the following schedule assumptions and clarifications –**

- 1) Assumes Construction GMP 2 will be awarded in January 2016 and Construction NTP will be received by February 1, 2017.
- 2) Work will begin in in one of the two Areas by the mid-February 2017.
- 3) GMP 2 includes sufficient General Conditions duration to allow for consecutive construction if necessary (59<sup>th</sup> and Royal Palms = 3 Months and 67<sup>th</sup> and Olive = 1.5 Months).
- 4) Substantial completion will be achieved as follows:
  - 59<sup>th</sup> & Royal Palms = 120 Cal. Days from NTP
  - 67<sup>th</sup> & Olive = 75 Cal. Days from NTP(Note: An additional 30 Cal. Days will be allowed for Final Completion.)
- 5) A detailed CPM schedule will be submitted in accordance with City standard CMAR Construction Contract.
- 6) Dates included herein are subject to adjustment based on final agreed to sequence and/or delays experienced by Contractor.

## **EXHIBIT E**

### **CMAR'S INSURANCE REQUIREMENTS**

CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

CMAR must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers compensation and employers liability insurance, providing the following coverage, limits and endorsements:

#### **1. Commercial General Liability Insurance.**

**1.1** The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$5,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$5,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

**1.2** The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

**1.3** Each general liability policy must be endorsed or written to:

- (A) Include the per project aggregate endorsement;
- (B) Name as additional insureds the following: City of Glendale and its employees, representatives and agents (collectively, the "Additional Insureds");
- (C) Stipulate that the insurance afforded by the policies furnished by CMAR will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by CMAR and by its Subcontractors;
- (D) Includes a severability of interest clause; and
- (E) Waive all rights of recovery against the Additional Insureds.

#### **2. Workers' Compensation Insurance.**

**2.1** The Workers' Compensation policy must meet all Arizona statutory requirements, and Employers' Liability Insurance, with limits of at least \$500,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

**2.2** CMAR must provide, at CMAR's expense, Voluntary Compensation insurance for the protection of employees engaged in the Work who are exempt from the coverage provided under the Workers' Compensation statutes with coverage equivalent or better than the coverage required in the preceding sentence, for the duration of the project.

**3. Auto Liability Insurance**

**3.1** Auto Liability must be carried with minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage.

**3.2** This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.

**3.3** This policy must be endorsed to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

**4. Equipment Property Insurance.**

**4.1** CMAR must secure, pay for, and maintain all-risk insurance as necessary to protect City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by CMAR, its Subcontractors or Supplier and any construction material in transit or stored in any location other than the Site.

**4.2** This policy must have a waiver of subrogation in favor of the Additional Insureds.

**5. Commercial Crime Insurance.** This policy must cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud.

**6. Waiver of Subrogation.** CMAR hereby waives, and will require each of its Subcontractors and Suppliers to waive, all rights of subrogation against the Additional Insureds to the extent of all losses or damages covered by any policy of insurance.

**7. Term of Coverage.**

**7.1** The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

**7.2** If at any time prior to the conclusion of time limit described in Section 7.1 above, CMAR cannot obtain equivalent coverage by replacement or renewal, CMAR must acquire a tail policy prior to expiration of the existing policy not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

**7.3** CMAR will furnish certificates of insurance and other evidence that City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.

**7.4** All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

**8. Subcontractor and Supplier Insurance Requirements.**

**8.1** CMAR must require all of CMAR's Subcontractors and Suppliers, as a condition of working on the Project, and of receiving payment, to:

- (A) Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverage, endorsements, terms of coverage and other provisions as are required of CMAR under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be

furnished by Supplier must be \$1,000,000 per occurrence, and \$1,000,000 as the annual aggregate limit); and

- (B) Timely furnish to City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
- (C) The Supplier's general liability policy must also be endorsed to provide the same coverage as the primary insurance, the general liability insurance furnished by CMAR must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by CMAR and Subcontractor.
- (D) City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

**9. Other Policy Provisions.** Each policy to be furnished by CMAR, each Subcontractor and Supplier must:

**9.1** Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;

**9.2** Have a deductible not exceeding \$10,000 unless otherwise agreed upon by City;

**9.3** Provide that attorneys' fees shall be outside of the policy's limits and shall be unlimited;

**9.4** Include the Facility per aggregate endorsement;

**9.5** Waive all rights of subrogation against City;

**9.6** Contain a provision that coverage afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days prior written notice has been given to City; and

**9.7** Be otherwise satisfactory to City. City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that City is satisfied the insurance is not commercially available to the insured. In such event, City shall have the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that City shall be a loss-payee under the policy.

**10. Certificates and Endorsements.**

**10.1** Within ten (10) days after the execution of this Agreement, CMAR must provide City with all certificates and endorsements evidencing that all insurance requirements have been met;

**10.2** Within ten (10) days after execution of each subcontract (but in all events prior to such Subcontractor or Supplier commencing Services), CMAR must provide City with certificates and endorsements from each of its Subcontractors and Suppliers, in all cases evidencing compliance by CMAR, and each Subcontractor and Supplier, with the requirements of this Exhibit. CMAR must also submit letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to City under the policy and that available coverage has not been reduced because of revised limits or payments made. In the event such representations cannot be given, CMAR, its Subcontractors and Suppliers must furnish the particulars thereof to City.

**10.3** If any of the foregoing insurance coverage is required to remain in force after Final Payment, CMAR must submit an additional certificate evidencing continuation of such coverage with the Application for Final Payment.

- 11. Reduction in Coverage.** CMAR, each of its Subcontractors and Suppliers must promptly inform City of any reduction of coverage resulting from revised limits, claims paid, or both. City shall have the right to require CMAR or the applicable Subcontractor or Supplier to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of CMAR or the applicable Subcontractor or Supplier.

**12. Suppliers and Materialmen Coverages.**

**12.1** CMAR will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

**12.2** With respect to any equipment, machinery or other goods for which City or CMAR has paid a deposit, CMAR will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming City and CMAR as loss payee as their interests appear.

**13. Condition Precedent to Starting Work.**

**13.1** Prior to, and as a condition of its right to begin performing any Work on the Site, CMAR and each Subcontractor and Supplier must deliver to City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to City that the required insurance is in place; together with the original of each bond required under this Agreement. CMAR and each Subcontractor and Supplier hereby authorize City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

**13.2** City shall be under no obligation or duty to make any such inquiry and City shall be entitled to rely on any proofs of insurance tendered by CMAR and its Subcontractors and Suppliers. City's acceptance of any proof of insurance and bonds offered by CMAR or any Subcontractor or Supplier will not be deemed a waiver of the obligations of CMAR and Subcontractors and Suppliers to furnish the insurance and bonds required by this Exhibit.

- 14. Additional Proofs of Insurance.** CMAR must, within ten (10) days after request, provide City with certified copies of all policies and endorsements obtained in compliance with this Agreement.

- 15. Indemnity.** The fact that CMAR and its Subcontractors and Suppliers are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties CMAR and its Subcontractors and Suppliers may have to indemnify, defend or hold harmless City and the other Additional Insureds from and against any and all Demands, Liabilities, Losses or Expenses of whatever kind or nature.

- 16. Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

**EXHIBIT F**

**FORMS OF PAYMENT AND PERFORMANCE BONDS**

(See Attached)



PERFORMANCE BOND

A.R.S. § 34-608

Penal Sum: \$ 2,766,064.66

KNOW ALL MEN BY THESE PRESENTS:

That Achen-Gardner Construction, LLC as Principal, hereinafter called Contractor, and Travelers Casualty and Surety Company of America, as Surety, hereinafter called Surety, jointly and severally bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns solely for the protection of Obligee as provided in A.R.S. § 34-608(A)(1).

WHEREAS Principal has entered into that certain "CMAR Agreement" ("Contract") with Obligee (referred to therein as "City"), dated February 21, 2017, for the design and construction of that certain Waterline Improvements Various Locations, as described therein, which Contract, together with all Change Orders and amendments thereto, is by reference made a part hereof, providing for a cumulative amount to be paid to Contractor for all design services, construction and other work (collectively, "Work" as described in the Contract) not to exceed guaranteed maximum price of \$ 2,766,064.66 dollars. In accordance with A.R.S. § 34-608(A)(1)(A), the Obligee estimates the price of the Construction Services the Obligee believes is likely to be furnished as of the date hereof \$ 2,766,064.66 (the "Penal Sum"). Two Million, Seven Hundred Sixty Six Thousand, Sixty Four and 66/100—Dollars

\*Project 131424

NOW, THEREFORE, the condition of this obligation is that, if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any change, extension, alteration or modification 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 agreements of all duly authorized changes, extensions, alterations or modifications of the Contract that may hereafter be made, notice of which changes, extensions, alterations or 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 Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement. The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by 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, finance services, maintenance services, operations services or any other related services included in the Contract.

Signed and sealed this 21st day of February, 2017.

Achen-Gardner Construction, LLC

PRINCIPAL SEAL

By: [Signature]

Title: John Walstrom / President

Travelers Casualty and Surety Company of America

SURETY SEAL

By: [Signature]  
Debra K. Williams (Attorney-in-Fact)

CBI Bonding, Inc.

Agency of Record

535 E McKellips Rd #129, Mesa, AZ 85203

Agency Address

[Signature]  
Arizona Resident Agent Countersignature  
Gregory P. Griffith

Bond Number 106683503

**PAYMENT BOND**

**A.R.S. § 34-608**

Penal Sum: \$ 2,766,064.66

KNOW ALL MEN BY THESE PRESENTS:

That Achen-Gardner Construction, LLC as Principal, hereinafter called Contractor, and Travelers Casualty and Surety Company of America, as Surety, hereinafter called Surety, jointly and severally, bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns, solely for the protections of claimants supplying labor or materials to CMAR or to CMAR's Subcontractors in the prosecution of construction and not for the protection of persons providing any design services, preconstruction or other non-construction services as provided in A.R.S. § 34-608(A)(2).

WHEREAS Principal has by written agreement dated February 21, 2017 entered into that certain "CMAR Agreement" ("Contract") with Obligor (referred to therein as "City") for the design and construction of that Waterline Improvements Various Locations Project 131424, as provided therein. In accordance with A.R.S. § 34-608(A)(2)(C), the Obligor estimates the price of the Construction Services the Obligor believes is likely to be furnished as of the date hereof \$ 2,766,064.66 (the "Penal Sum"). Two Million, Seven Hundred Sixty Six Thousand, Sixty Four and 66/100—Dollars

NOW, THEREFORE, the condition of this obligation is 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 construction 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 Title 34, Chapter 6, 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 Agreement. The Surety hereby consents in advance to, and waives notice of any change directive or change order, extension of time or any other material alteration or modification of the Contract, or of the Work to be performed thereunder. 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 the court.

Witness our hands this 21st day of February, 2017.

Achen-Gardner Construction, LLC

PRINCIPAL SEAL

By: 

John Walstrom / President

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

Travelers Casualty and Surety Company of America

SURETY SEAL

By: 

Debra K. Williams (Attorney-in-Fact)

CBI Bonding, Inc.

Agency of Record

535 E McKellips Rd #129

Mesa AZ 85203

Agency Address

  
Arizona Resident Agent Countersignature Gregory P. Griffith

Bond Number 106683503

**TRAVELERS** **POWER OF ATTORNEY**

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 229283

Certificate No. 006237813

**KNOW ALL MEN BY THESE PRESENTS:** That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Barry R. Farr, Andrew Farr, Gregory P. Griffith, Debra K. Williams, and Stephanie L. Bucholz

of the City of Mesa, State of Arizona, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 13th day of April, 2015.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

By: 

Robert L. Raney, Senior Vice President

On this the 13th day of April, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2016.



  
 Marie C. Tetreault, Notary Public

**Travelers Casualty and Surety Company of America**

**Notice of Claim Filing Address**

**Attn: Surety Claims  
One Tower Square, S102A  
Hartford, CT 06183**

**Telephone: 800-842-8496  
Fax: 860-277-1303**

# STATE OF ARIZONA

## DEPARTMENT OF INSURANCE

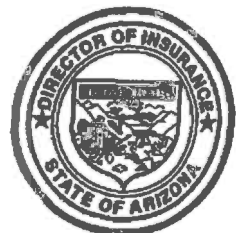
*THIS IS TO CERTIFY, THAT THIS  
INSTRUMENT IS A FULL, TRUE AND  
CORRECT COPY OF THE ORIGINAL ON  
FILE WITH THE DEPARTMENT OF  
INSURANCE OF THE STATE OF ARIZONA  
AND CONSISTS OF 1 PAGE(S)*

HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THIS DEPARTMENT  
FOR THE DIRECTOR OF INSURANCE THIS 8 DECEMBER 2014.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

CERTIFICATE No.:

291071





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/21/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Willis of Arizona, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	<b>CONTACT NAME:</b>		
	<b>PHONE (A/C, No, Ext):</b> 1-877-945-7378 <b>E-MAIL ADDRESS:</b> certificates@willis.com	<b>FAX (A/C, No):</b> 1-888-467-2378	
<b>INSURED</b> Achen-Gardner Construction, LLC Attn: Lorna Tremaine 550 South 79th Street Chandler, AZ 85226	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Charter Oak Fire Insurance Company		25615
	<b>INSURER B:</b> Travelers Property Casualty Company of America		25674
	<b>INSURER C:</b> Travelers Casualty and Surety Company		19038
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

**COVERAGES****CERTIFICATE NUMBER:** W2008418**REVISION NUMBER:**

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

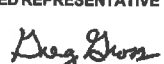
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
	OTHER:						
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY						
	<input checked="" type="checkbox"/> ANY AUTO						
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						
	<input type="checkbox"/> HIRED AUTOS ONLY						
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB						
	<input type="checkbox"/> CLAIMS-MADE						
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					
	If yes, describe under DESCRIPTION OF OPERATIONS below						
B	Contractors Equipment-						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: City of Glendale Waterline Improvements - Various Locations - GMP II.  
Project #131424.

City of Glendale and its employees, representatives and agents are included as Additional Insureds as respects to General Liability and Auto Liability.

**CERTIFICATE HOLDER****CANCELLATION**

City of Glendale 5850 W Glendale Avenue Glendale, AZ 85301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_

**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

AGENCY Willis of Arizona, Inc.		NAMED INSURED Achen-Gardner Construction, LLC Attn: Lorna Tremaine 550 South 79th Street Chandler, AZ 85226	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

General Liability and Auto Liability policies shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insureds.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability, Auto Liability, Equipment Coverage and Workers Compensation as permitted by law.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>A. BROAD FORM NAMED INSURED</li> <li>B. BLANKET ADDITIONAL INSURED</li> <li>C. EMPLOYEE HIRED AUTO</li> <li>D. EMPLOYEES AS INSURED</li> <li>E. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS</li> <li>F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE - INDEMNITY BASIS</li> <li>G. WAIVER OF DEDUCTIBLE - GLASS PROVISIONS</li> </ul> | <ul style="list-style-type: none"> <li>H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE- INCREASED LIMIT</li> <li>I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT</li> <li>J. PERSONAL PROPERTY</li> <li>K. AIRBAGS</li> <li>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</li> <li>M. BLANKET WAIVER OF SUBROGATION</li> <li>N. UNINTENTIONAL ERRORS OR OMISSIONS</li> </ul> |
|---|---|

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.S., Other Insurance, of SECTION IV - BUSINESS AUTO CONDITIONS:

h. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your



perrussron, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

#### E. SUPPLEMENTARY PAYMENTS- INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

#### F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE-INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV - BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**G. WAIVER OF DEDUCTIBLE - GLASS**

The following is added to Paragraph D., Deductible, of SECTION III - PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT**

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for anyone "accident".

**I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL PROPERTY**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., Exclusions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- The airbags are not covered under any warranty; and
- The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of SECTION IV - BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- You (if you are an individual);
- A partner (if you are a partnership);
- A member (if you are a limited liability company);
- An executive officer, director or insurance manager (if you are a corporation or other organization); or
- Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - BUSINESS AUTO CONDITIONS:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV - BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.



One Tower Square, Hartford, Connecticut 06183

CHANGE ENDORSEMENT

Named Insured:  
ACHEN-GARDNER CONSTRUCTION  
AND AS PER IL T8 00

Policy Number: DT-810-6C321481-TIL-16  
Policy Effective Date: 12/31/16  
Issue Date: 01/10/17  
Premium \$ NIL

INSURING COMPANY:  
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

Effective from 12/31/16 at the time of day the policy becomes effective.

THIS INSURANCE IS AMENDED AS FOLLOWS:

THE COMMERCIAL AUTOMOBILE COVERAGE PART IS AMENDED AS FOLLOWS:

THE FOLLOWING FORM IS ADDED AS PER ATTACHED:

CA T4 74 02 15 - BLANKET ADDITIONAL INSURED - PRIMARY AND NON-  
CONTRIBUTORY WITH OTHER INSURANCE

NAME AND ADDRESS OF AGENT OR BROKER:  
WILLIS OF ARIZONA INC (F9437)  
16220 N SCOTTSDALE RD STE 600  
SCOTTSDALE, AZ 85254

COUNTERSIGNED BY:

\_\_\_\_\_  
Authorized Representative

DATE: \_\_\_\_\_

IL TO 07 09 87      PAGE 1 OF 1  
OFFICE: PHOENIX

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

1. The following is added to Paragraph A.1.c., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II**.

2. The following is added to Paragraph B.5., **Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **BLANKET ADDITIONAL INSURED (CONTRACTORS)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

1. WHO IS AN INSURED - (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
  - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
  - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III - Limits Of Insurance.
  - b) The Insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
    - ii. Supervisory, inspection, architectural or engineering activities.
- c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
  - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. - DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTORS XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><b>A. Aircraft Chartered With Pilot</b></li> <li><b>B. Damage To Premises Rented To You</b></li> <li><b>C. Increased Supplementary Payments</b></li> <li><b>D. Incidental Medical Malpractice</b></li> <li><b>E. Who Is An Insured – Newly Acquired Or Formed Organizations</b></li> <li><b>F. Who Is An Insured – Broadened Named Insured – Unnamed Subsidiaries</b></li> <li><b>G. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. Blanket Additional Insured – Lessors Of Leased Equipment</b></li> <li><b>I. Blanket Additional Insured – States Or Political Subdivisions – Permits</b></li> <li><b>J. Knowledge And Notice Of Occurrence Or Offense</b></li> <li><b>K. Unintentional Omission</b></li> <li><b>L. Blanket Waiver Of Subrogation</b></li> <li><b>M. Amended Bodily Injury Definition</b></li> <li><b>N. Contractual Liability – Railroads</b></li> </ul> |
|---|--|

### **PROVISIONS**

#### **A. AIRCRAFT CHARTERED WITH PILOT**

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

#### **B. DAMAGE TO PREMISES RENTED TO YOU**

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A. BODILY**

### **INJURY AND PROPERTY DAMAGE LIABILITY:**

Exclusions c. and g. through n. do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water;

unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**.



## COMMERCIAL GENERAL LIABILITY

### 3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE:**

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

### 4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

### 5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

### 6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- (b) That is insurance for "premises damage"; or

### 7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

## C. INCREASED SUPPLEMENTARY PAYMENTS

### 1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGE:**

- b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

### 2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES:**

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## D. INCIDENTAL MEDICAL MALPRACTICE

### 1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

"Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.

### 2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraph (1)(d) above does not apply to "bodily injury" arising out of providing or failing to provide:

(I) "Incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or

(II) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

## COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

### **Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

### **E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

### **F. WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED:**

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.

## COMMERCIAL GENERAL LIABILITY

### G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
  - (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

### H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
  - b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.
  - c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.
- I. **BLANKET ADDITIONAL INSURED – STATES OR POLITICAL SUBDIVISIONS – PERMITS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required

## COMMERCIAL GENERAL LIABILITY

by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The insurance provided to such state or political subdivision does not apply to:

- a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

### J. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event Of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

- (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.
- (2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
  - (a) Any individual who is:
    - (i) A partner or member of any partnership or joint venture;

- (ii) A manager of any limited liability company; or

- (iii) An executive officer or director of any other organization;

that is your partner, joint venture member or manager; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

### K. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

### L. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

## COMMERCIAL GENERAL LIABILITY

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal Injury" or "advertising injury" caused by an offense that is committed; subsequent to the execution of that contract or agreement.

### M. AMENDED BODILY INJURY DEFINITION

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

### N. CONTRACTUAL LIABILITY -- RAILROADS

1. The following replaces Paragraph c. of the definition of "Insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "Insured contract" in the **DEFINITIONS** Section is deleted.

**TRAVELERS**

ONE TOWER SQUARE  
HARTFORD, CT 06183

WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 0313 (00)-01

POLICY NUMBER: (DTAUB-6C32148-1-16)

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.

## **EXHIBIT G**

### **DISPUTE RESOLUTION PROCEDURES**

#### **1. Disputes.**

- 1.1** Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) shall be initiated and decided under the provisions of this Exhibit.
- 1.2** CMAR and City shall each designate in writing to the other party, from time to time, a member of senior management who shall be authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3** A party shall initiate a Dispute by delivery of written notice to the members of management designated by the respective parties under Section 1.2 of this Exhibit.
- 1.4** The parties must:
  - (A) Attempt to resolve all Disputes promptly, equitably and in a good faith manner; and
  - (B) Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5** With respect to matters concerning modification of the GMP or any schedule, CMAR must first follow the provisions of any Claim procedure established by the Design-Build Agreement before seeking relief under these Procedures.

#### **2. Emergency Arbitration.**

- 2.1** If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either party considers necessary to prevent or mitigate a material delay to the critical path of the Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a party, either party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
  - (A) The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
  - (B) If the Emergency Arbitrator has not been selected at the time a party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
  - (C) The Emergency Arbitrator shall be an attorney with at least ten (10) years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either party for at least ten (10) years.
- 2.2** The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration

Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules").

- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
  - 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
  - 2.5 All proceedings to arbitrate Time Sensitive Disputes shall be conducted in Glendale, Arizona.
  - 2.6 Presentation, request for determination (*i.e.*, a party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.6 of this Exhibit.
  - 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
  - 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
    - (A) Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
    - (B) The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a party that fail to meet this obligation.
3. **Non-Emergency Arbitration.**
- 3.1 Except as provided in Section 5 of this Exhibit, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an AAA emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
    - (A) The parties shall each select an arbitrator within 15 days after notice that a party desires to resolve a dispute by arbitration.
    - (B) The two arbitrators shall then each select a third arbitrator. If an arbitrator is not selected within any such 15 day period, then the arbitrator shall be appointed by the AAA.
  - 3.2 The arbitrator(s) shall meet the qualifications of Emergency Arbitrators as provided in Section 2 of this Exhibit.
  - 3.3 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
  - 3.4 In connection with such arbitration, each party shall be entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each



party shall deliver to the other party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 3.5** The arbitration hearing shall be held within 150 days of the appointment of the arbitrators.
- 3.6** At the arbitration hearing, each party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
- (A) Each party's Proposed Resolution must be fully dispositive of the dispute.
  - (B) The arbitrators must select one Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
  - (C) The parties must submit their proposed resolution of the matter to the arbitrators and the other party 15 days prior to the date set for commencement of the arbitration proceeding.
  - (D) The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
  - (E) The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
  - (F) All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing party, must be paid by the party whose position was not selected by the arbitrators.
- 4. Continuing Work.** Unless otherwise agreed to in writing, CMAR must continue to perform and maintain progress of the Work during any Dispute Resolution or arbitration proceedings, and City will continue to make payment to CMAR in accordance with the Agreement.
- 5. Exceptions.**
- 5.1** Neither City nor CMAR are required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with City and CMAR.
- 5.2** City or CMAR may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the party seeks to enforce is enforceable under Arizona law), including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 5.3** This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Glendale Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of City acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4** In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Arizona Rules of Civil Procedure.