

# TOWN OF ORO VALLEY

## NOTICE OF REQUEST FOR QUALIFICATIONS #12017

Notice is hereby given that the Town of Oro Valley is conducting a competitive process with the intent of contracting for a construction management team/general contractor to serve as the Construction Manager at Risk for the Town of Oro Valley Aquatic Center Enhancement project. All inquiries for information regarding this solicitation should be directed to: Brian Garrity [bgarrity@orovalleyaz.gov](mailto:bgarrity@orovalleyaz.gov).

### **Due Date**

Sealed submittals will be received until **Monday, February 27, 4:00 P.M.**

Responses should be mailed or hand delivered to:

Town of Oro Valley, Town Clerk  
11000 N. LaCañada Drive  
Oro Valley, Arizona 85737

### **Pre-submittal Conference**

February 13, 2012 - 2:00 P.M.

Oro Valley Town Hall  
Council Chambers

### **Description**

**The Town of Oro Valley intends to expand and upgrade our aquatics facility located at James D. Kriegh Park. The project will consist of structural and program improvements to the current facility and added amenities that may include a splash pad, second pool, drop slide and other recreational components. The Town intends to utilize a Construction Manager at Risk (CMAR) delivery method for this project.**

A copy of this solicitation and possible future addenda may be obtained from our Internet site at: [http://www.orovalleyaz.gov/Town\\_Government/Procurement.htm](http://www.orovalleyaz.gov/Town_Government/Procurement.htm). Internet access is available at the Oro Valley Public Library as well as all Tucson-Pima Public Libraries.

Any interested bidder without Internet access may obtain a copy of this solicitation by calling (520) 229.4722, or a copy may be picked up during regular business hours at 11000 N. La Canada Drive, Oro Valley, Arizona 85737.

**The Town of Oro Valley takes no responsibility for informing recipients of changes to the original solicitation document.** It is the Offeror's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.



## **Request for Qualifications #12017**

For

### ***CONSTRUCTION MANAGER AT RISK (CMAR) FOR THE ORO VALLEY AQUATICS CENTER ENHANCEMENT PROJECT***

#### **Due Date**

*February 27, 2012  
4:00 P.M.*

#### **Pre-Submittal Conference**

*February 13, 2012  
2:00 P.M.*

*Kachina Conference Room*

**Parks, Recreation, Library and Cultural Resources Department**  
Town of Oro Valley

## I. INTRODUCTION

The Construction Manager at Risk (CMAR) will provide pre-construction management services during the design phase of the project and serve as the general contractor during construction of the project. Construction Management at Risk begins with the firm in an agency support role for pre-construction services. At some point prior to construction, the CMAR will assume the risk of delivering the project through a guaranteed maximum price contract.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum cost of the Work; the CMAR construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved pursuant to Article V of the CMAR Standard Terms & Conditions contained herein. The approved GMP will be made part of the Contract by executing an amendment or additional amendments for phased construction.

The CMAR will be responsible for construction means and methods, and may be required to solicit bids from prequalified subcontractors to perform the work. The CMAR may also self-perform specific work packages.

A. Design Phase services by the CMAR may include the following:

- Team building/partnering (meetings)
- Management plan
- Value analysis/engineering
- Constructability reviews
- Cost Model/Budget
- Estimating/price guarantees
- Bid package strategy
- Ordering of long lead-time materials

B. Construction Phase services by the CMAR may include the following:

- Team management/coordination
- Scheduling/submittal process
- Cost controls/change order management
- Subcontracting
- Field management
- Safety/QC programs
- Project close out/warranty period services

## II. SELECTION PROCESS AND SCHEDULE

A Selection Committee will evaluate each Statement of Qualifications (SOQ) according to the stated evaluation criteria. The Town intends to invite three to five firms to participate in interviews following the SOQ evaluations. Following the interview process

the Committee shall develop a short list of three firms and the top ranked firm will be invited to enter into negotiations with the Town and execute a contract upon completion of negotiation of fees and contract terms. If the Town is unsuccessful in negotiating a contract with the best-qualified team, the Town may then negotiate with the second or third most qualified team until a contract is executed, or may decide to terminate the selection process.

### **III. PROJECT DESCRIPTION**

The Town of Oro Valley (Town) invites interested and qualified Construction Firms and/or Teams to submit a written Statement of Qualifications to provide preconstruction (design phase) services and serve as the general contractor for the Oro Valley Aquatic Center Enhancement Project. The goal of the project is to provide a facility that will:

- A. Attract large scale aquatics events in order to boost economic development in Oro Valley.
- B. Provide a high quality recreational / swimming facility for Town residents.
- C. Result in a substantial return on investment and increased Aquatics operations cost recovery.

### **BACKGROUND**

#### **A. Design Process**

The Town engaged the consulting firm of Ballard\*King along with Water Technologies, Inc. to perform a feasibility study and economic impact analysis on potential enhancements, expansions or new facilities. As a result of this study, the Town is pursuing recommendations outlined in the report that serve to provide the greatest benefit for the Town and surrounding region. The study is available for review.

The Town is currently in the process of selecting a consulting firm to provide design services. It is anticipated that the design team will be issued a notice to proceed by late February. The successful CMAR will be required to immediately begin working with the Town and the design team providing preconstruction services.

#### **B. Facilities**

The Oro Valley Municipal Pool was built in the early 1970's and was acquired by the Town in 1995. This facility includes an Olympic sized swimming pool (50 meters x 25 yards), a wading pool, canteen, office and open-air bath house. In 2000, the pool was closed for an entire year to perform much needed repairs. The pump house was completely gutted and new plumbing, filters and pumps were put in place. The bathrooms were renovated as well as the staff office. The pool deck was resurfaced and a shade structure was placed above the wading pool. In 2008,

the deck was resurfaced again and the pool converted from a bromine system to a chlorine system.

### C. Programs & Users

- 3 Local high schools
- 2 Non-profit swim teams
- Local, state, regional and national events
- Triathlon groups and camps
- Non-profit organizations
- Boy Scout troops
- Fire & Rescue groups
- Summer camps

## DETAILED SERVICES

### A. Project Elements

It is anticipated that the project elements constructed under this contract shall consist of the following (list may not be all-inclusive) identified in the study and recommended by Town staff:

1. Renovate locker rooms to expand size so that the men's changing room will be located where the existing changing rooms are now and the women's changing room will be created where the pool administrative staff room is now. Possible westward extension (towards parking lot) may be necessary to complete this renovation.
2. The pool check-in will move to the front of the building and wrap around the building to consume some of the existing cantina space to provide for pool side visual connection.
3. The fence on the east side of the pool will be set back further east to provide additional deck space and sun turf inside the fenced area.
4. Improve area lighting for use at night.
5. The current kid's pool will be removed as well as the surrounding chain-link fence and this area paved for additional deck seating. The existing shade structure will remain.
6. Deck water drainage will be improved with appropriate trench drains throughout facility.
7. The entire pool deck surface will be removed and a new cool slip resistant deck surface will be installed.
8. Additional shade will be provided with three 200 sq. ft shade structures.

9. Additional deck furniture will be provided for user comfort.
10. The existing gutter will be replaced and a surge tank installed to provide better performance.
11. Modify Competition pool by raising the level of the deck to provide ten lanes of 25 yards starting at USA Swimming compliant depths and starting from both ends of the 50 meter pool.
12. Both pool pumps have experienced operational issues and will be replaced with a high performance pumps and motors. Associated electrical work will be modified as well.
13. Upgrade all piping, above and underground, associated with the existing pool and its associated systems.
14. A new interactive splash pad will be installed on the northeast side of the pool with a dynamic water play structure. This splash pad will have the option to have some standing water up to 18 inches deep when it is desired and can be guarded. This will be master planned to exist in concert with future aquatic amenities.
15. Provide for a multipurpose 6 lane 25 yard lap pool. This pool will provide for a warm up and warm down pool for larger swimming meets and will provide additional program and recreational space.
16. Provide an exciting drop slide for a unique amenity that can go into deeper water.
17. Expand the deck supporting this pool operation and connecting to the existing facilities.
18. There will be additional concrete for expanded spectator seating for long course events. Provide additional spectator seating and shade.
19. Install a new 10 lane timing system and medium level score board.
20. Compliance with all existing ADA opportunities including, but not limited to the following: height requirements for railings, washroom amenities, doorknobs, water fountains walkway slopes and pool lifts.
21. Classroom space with tables, chairs and a white board to be configured within the new building plans.
22. Diving board to be installed as part of the attractions.
23. Concession area, with appropriate utilities to be included in the building plans.

24. Speaker/intercom system to be installed.

### **B. Project Considerations**

This project is a significant investment for the Town. It is critical the project use its funds wisely. In addition, the design must consider:

1. Understanding and sensitivity to the number and type of users and requirements of competitive teams. Schedules shall be devised such that there is a minimum amount of impact to the users. Paramount to the success of the schedule is the availability of water during training seasons.
2. Designing and constructing the building's mechanical and electrical systems, lighting, covers, pool heating, etc. to be energy efficient and flexible to meet future requirements. Design and material selection shall proceed with the intent of obtaining LEED EB Certification.
3. Incorporating scheduling and construction principles which ensure the safety and security of the completed facility, as well as those who use and move through it.

### **C. Project Budget**

The budget for this project is approximately \$3.2 million. This represents the complete design and construction cost of the project.

## **IV. TIME OF PERFORMANCE**

The Town and the CMAR shall jointly develop an aggressive performance schedule during the design phase of the project. The availability of the consultant to start immediately and proceed diligently on the construction of the project shall be a consideration in the selection process. It is anticipated that the first phase of construction shall begin in May of 2012.

## **V. PROJECT/CONTRACT AWARD**

A Selection Committee will evaluate the qualifications as submitted in the SOQ of each respondent based on the Evaluation Criteria published in this RFQ. If warranted, the Committee may request additional information through interviews, presentations correspondence, client reference checks and/or visitation of completed projects.

After evaluation of the SOQ a list of at least three (3) and no more than five (5) Firms and/or Teams will be invited to participate in interviews with the Committee. During the Interviews, the Town desires to achieve a more comprehensive understanding of the Firm and/or Team, their experience, approach, special abilities in relation to the specifics of this project, and potential to develop the best mutual working relationship among the parties of the Project Team.

Subject to availability of funding, the Town then anticipates negotiating a single fixed-fee contract for preconstruction services with the highest-ranked Firm and/or Team, at compensation and with terms which the Town determines to be fair and reasonable. If the Town is unable to negotiate a satisfactory agreement with the highest-ranked Firm and/or Team, at a price and with terms which the Town determines to be fair and reasonable, negotiations with that Firm and/or Team will be formally terminated. The

Town may then undertake negotiations with the next highest-ranked Firm and/or Team in sequence until an agreement is reached, or determine to reject all submittals and re-solicit for RFQs, or use another selection process that the Town deems prudent.

## INSTRUCTIONS TO OFFERORS

### 1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

**Addendum:** A document issued by the Town that has the effect of modifying, clarifying, adding to or deleting specifications, scope, and terms or conditions of the solicitation.

**Amendment:** A document issued by the Town that modifies the specifications, scope or terms and conditions of a contract.

**Contract:** The legal agreement executed between the Town and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, addenda, amendments, the Contractor's offer and negotiated items as accepted by the Town.

**Contractor/Consultant:** The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the Town.

**May:** Indicates something that is not mandatory but permissible.

**Offeror:** The individual, partnership, or corporation who submits a proposal or offer in response to a solicitation.

**Procurement Agent:** The central contracting authority for the Town.

**Project Manger:** The Town employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the Town's sole discretion, result in the rejection of a proposal as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the Town may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

**Town:** The Town of Oro Valley, Arizona.

2. **PRE-SUBMITTAL CONFERENCE:** If scheduled, the date and time of a Pre-Submittal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. The purpose of this conference will be to clarify the contents of this Request for Qualifications in order to prevent any misunderstanding of the Town's position. Any doubt as to the requirements of this Request for Qualifications or any apparent omission or discrepancy should be presented to the Town at this conference. The Town will then determine the appropriate action necessary, if any, and may issue a written addendum to the Request for Qualifications. Oral statements or instructions will not constitute an addendum to this Request for Qualifications.
3. **INQUIRIES:** Any question related to the solicitation shall be directed to the contact person whose name appears on the cover page. The contact person may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the solicitation due date. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number. An envelope containing questions

should be identified as such, otherwise it may not be opened until after the official submittal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written addendum to the solicitation will be binding.

4. **SOLICITATION ADDENDUM:** The Offeror shall acknowledge receipt of a solicitation addendum by signing and returning the document by the specified due date and time. The Request for Qualifications with Information for Respondents, Supplemental Project Information, any future Addenda may be obtained from the Town's website: <http://www.orovalleyaz.gov/Procurement/>. **It is the sole responsibility of the Respondent to obtain, review, and acknowledge any addenda that may be published on the Town's website.**
5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a response, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a response will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.
6. **PREPARATION OF RESPONSE:**
  - A. The Offer page and any solicitation addenda must be signed and returned with the response.
  - B. The Offer page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer page, RFQ addenda, or cover letter accompanying the proposal documents shall constitute an offer to provide the requested service
  - D. Periods of time, stated as a number of days, shall be in calendar days unless otherwise specified.
  - E. It is the responsibility of all offerors to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a response. Negligence in preparing a response confers no right of withdrawal after due date and time.
  - F. The Town shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
7. **TAXES:** Sales taxes shall not be included in the price information.
8. **SUBMITTAL FORMAT:** **An original and 7 copies (8 total) of each response and a USB flash drive with an electronic copy** should be submitted on the forms and in the format specified in the solicitation. The material should be in sequence and related to the solicitation. **The sections of the submittal should be tabbed, clearly identifiable and should include a minimum of the following sections: the completed Offer Page, all signed addenda and the Offeror's response to all Evaluation Criteria.** Failure to include the requested information may have a negative impact on the evaluation of the submittal.

- 9. EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any solicitation is an offer to contract with the Town based upon the contract provisions contained in the Town's Standard Contract (attached), the specifications, scope of work and any special terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the contract cannot be modified without the express written approval of the Procurement Agent. If a response or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Procurement Agent, the contract provisions contained in the Town's solicitation document and standard contract shall prevail. **NO EXCEPTIONS OR REVISIONS TO THE INDEMNIFICATION PROVISION OF THE STANDARD CONTRACT SHALL BE CONSIDERED.**
- 10. PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the Town and shall become a matter of public record available for review subsequent to the award notification.
- 11. CONFIDENTIAL INFORMATION:** The Town is obligated to abide by all public information laws. If an Offeror believes that any portion of a response, offer, specification, or correspondence contains information that should be withheld, a statement advising the Procurement Agent of this fact should accompany the submission and the information shall be so identified wherever it appears. The Town shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.
- 12. CERTIFICATION:** By signature on the Offer page, solicitation addenda, or cover letter accompanying the submittal documents, Offeror certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
  - B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
  - C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
  - D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.
- 13. RESPONSES TO THIS SOLICITATION:** In order to be considered, the Offeror must complete and submit its response to the Town Clerk at 11000 N. LaCanada Dr., Oro Valley, AZ 85737, prior to or at the exact date and time indicated on the Notice page. The Offeror's response shall be submitted in a sealed envelope. The words "SEALED OFFER" with the REQUEST FOR QUALIFICATIONS TITLE, NUMBER, DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.

- 14. LATE SUBMITTALS:** Late submittals will be rejected and returned unopened.
- 15. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the Town requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the solicitation due date and time.
- 16. WITHDRAWAL OF OFFER:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the offer by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

## **17. EVALUATION PROCESS**

- A. An appropriately qualified selection committee shall evaluate the statements of qualifications and performance data that are submitted in response to the request for qualifications for the proposed contract.
- B. If determined by the Town and included in the request for qualifications, conduct discussions with at least the number of persons or firms to be included on the short list as stated in the request for qualifications but not more than the number of persons or firms to be included on the short list plus two as specified in the request for qualifications regarding the contract and the relative methods of approach for furnishing the required professional services or construction services.
- C. In order of preference, based on criteria established and published by the selection committee and included in the request for qualifications, select a short list of persons or firms the selection committee deems to be the most qualified to provide the professional services or construction services. The number of persons or firms on the short list shall be the number of persons or firms specified in the request for qualifications.
- D. The Town shall enter into negotiations for a contract with the highest qualified person or firm for the professional services or for the construction services. The negotiations shall include consideration of compensation and other contract terms that the Town determines to be fair and reasonable. In making this decision, the Town shall take into account the estimated value, the scope, the complexity and the nature of the professional services or construction services to be rendered. If the Town is not able to negotiate a satisfactory contract with the person or firm considered to be the most qualified at compensation and other contract terms the Town determines to be fair and reasonable, the Town shall formally terminate negotiations with that person or firm. The Town may undertake negotiations with the next most qualified person or firm in sequence until an agreement is reached or a determination is made to reject all persons or firms on the short list. If a contract for construction services is entered into pursuant to this subsection, construction shall not commence until the Town and contractor agree in writing on a fixed price or a guaranteed maximum price for the construction to be commenced.

- 18. SUBCONSULTANTS:** During negotiations, offeror must disclose in writing any sub-consultant to be utilized in performance of services herein. For each sub-consultant, detail on respective qualifications should be included in the submittal.
- 19. UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the Town, within ten (10) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.
- 20. AWARD OF CONTRACT:** Notwithstanding any other provision of the solicitation, the Town reserves the right to:
- (1) waive any immaterial defect or informality; or
  - (2) reject any or all submittals, or portions thereof; or
  - (3) reissue the solicitation.

## EVALUATION REQUIREMENTS

Firms interested in providing Construction Manager at Risk services must submit a Statement of Qualifications (SOQ) that addresses the following issues listed here:

### SELECTION CRITERIA –

- A. APPROACH TO PERFORMING THE REQUIRED SERVICES (30)**
- B. EXPERIENCE AND QUALIFICATIONS OF THE FIRM/TEAM (30)**
- C. GENERAL INFORMATION (20)**
- D. OVERALL EVALUATION (15)**
- E. SUBCONTRACTOR SELECTION PLAN (5)**

**REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA:** The narrative portion and the materials presented in response to this Request For Qualifications shall be submitted in the same order as requested and must contain, at a minimum, the following:

### A. APPROACH TO PERFORMING THE REQUIRED SERVICES

1. Discuss any issues your firm has identified on this project and how those will be addressed.
2. Describe your firm's project management approach and team organization during pre-construction and construction phase services.
3. Describe systems used for planning, scheduling, estimating and managing construction. In addition, briefly describe the firm's experience on quality control, dispute resolution and safety management.
4. Indicate which elements of work your firm would propose to perform with its own forces.
5. Describe your firm's experience working with A/E firms in evaluating design constructability and adherence to budget during pre-construction phase services. Provide contact information for up to three (3) A/E firms that you worked with in this manner.

### B. EXPERIENCE AND QUALIFICATIONS OF THE FIRM/TEAM

1. Identify at least three (3) comparable projects, particularly those involving municipal aquatics centers, competition pools facilities, or family aquatic recreation centers in which the firm served as either CMAR, Agency CM and/or General Contractor. For each project please provide the following:
  - Description of project
  - Role of the Firm (include pre-construction services provided, if any)
  - Project's original contracted construction cost and final construction cost
  - Construction dates
  - Owner
  - Two (2) project references with telephone numbers and email addresses.

2. Provide a listing of the proposed project team and their resumes. Identify the role that each team member is expected to take and provide up to three (3) examples of projects where they assumed that role.
3. List any proposed consultants and/or subcontractors expected to assist on this project. Identify the role they will play and provide up to two (2) project references for them.
4. Describe your experience at performing similar self-performed work in the trade area(s) of the Project during the last three years.

#### **C. GENERAL INFORMATION**

1. Provide a general description of the firm and/or team that is proposing to provide construction management and general construction services.
2. Provide an organizational chart showing key personnel.
3. Provide a listing of the Arizona professional and contractor licenses held by the team.
4. Identify any claims arising from a contract which resulted in litigation, arbitration or administrative hearing within the last three years. Briefly describe the circumstances and outcome.
5. Provide the firms safety rating and verification from surety as to the firms bonding capacity.
6. Workload – Provide a list of current projects in progress, their size, and estimated time of completion. Include significant projects on hold, which may become active during this project. Provide a chart, which shows the percentage of the firm's total work-hour capacity that your current work represents and estimate the percentage of the total work-hour capacity that this project would represent.

#### **D. OVERALL EVALUATION**

1. Perceived ability of the firm / team to provide the required services in a way that provides the desired quality, budget adherence, and aggressive schedule that is needed on this project.

#### **E. SUBCONTRACTOR SELECTION PLAN**

1. Submit a proposed Subcontractor Selection Plan pursuant to ARS 34-603. The plan must describe procedures to be used in selecting subcontractors, and selection shall be based on a combination of qualifications and price.

2. Identify the criteria under which qualifications and price will be evaluated, and describe whether a one-step or two-step selection process will be employed, including detail on the process.

### **III. GENERAL**

#### **A. Additional Investigations:**

The Town reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting an offer.

#### **B. Prior Experience:**

Experiences with the Town and entities that evaluation committee members represent may be taken into consideration when evaluating qualifications and experience.

# CONSTRUCTION MANAGER AT RISK (CMAR) TERMS AND CONDITIONS

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### ARTICLE 1 – TERMS AND DEFINITIONS

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

Completion Time - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.

Construction Documents – The plans, specifications, and drawings prepared by the Design Professional and issued as approved for construction meaning the documents are sealed by the Design Professional, signed and acceptable for permitting.

Construction Fee – The CMAR’s profit for the Construction phase of the project. May be negotiated at the time of the Pre-Construction Services and noted in Contract.

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

Contingency (Contractor’s) - A fund to cover cost growth during the Project usually for costs that result from Project circumstances. The amount of the CMAR’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR’s Contingency is described in 5.4.1.

Contingency (Owner’s) – A fund to cover cost growth during the Project used at the discretion of the Town usually for costs that result from Town directed changes or unforeseen site conditions. The amount of the Owner’s Contingency will be set solely by the Town and will be in addition to the project costs included in the CMAR’s GMP packages. Use and management of the Owner’s Contingency is described in 5.4.2.

Contract Documents - This Contract, exhibits, attachments, the Notice to Proceed for design phase services, all written Amendments and Change Orders to this Contract and any other documents so designated in this Contract.

Cost of the Work - The direct costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit fees (as directed), materials testing, and related items. The Cost of the Work shall not include the CMAR's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Day - Calendar day(s) unless otherwise specifically noted in the Contract Documents.

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

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

Design Professional - The qualified, licensed person, firm or corporation who furnishes design services required under the Contract Documents.

Float - Number of Days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a critical Contact Time or schedule milestone in the Project Schedule.

General Conditions Costs – Includes, but is not limited to the following types of costs for the CMAR during the construction phase: payroll costs for project manager or construction manager but not both for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CMAR or Subcontractors, fees for permits (as directed) and licenses.

Guaranteed Maximum Price (GMP) – The sum of the maximum cost of the Work including the CMAR's construction fee, general conditions fee, sales tax, bonds, insurance costs, and contingency(ies).

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CMAR setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase.

Notice to Proceed - A written notice given by Town to the CMAR fixing the date on which the CMAR will start to perform the CMAR's obligations under this Contract.

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

Project Team – Design phase services team consisting of the Design Professional, CMAR, Town of Oro Valley Project Manager, Town's User Department's representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

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

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

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

Subcontractor - An individual or firm having a direct contract with the CMAR or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CMAR is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

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

Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Design Professional and the Town, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

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

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

**ARTICLE 2 - CMAR'S SERVICES AND RESPONSIBILITIES****2.1 General Services**

- 2.1.1** The CMAR shall attend regularly scheduled meetings and assist the Town and Design Professional during the Pre-Construction Phase consistent with the Terms and Conditions described herein.
- 2.1.2** CMAR's Representative shall be reasonably available to the Town and shall have the necessary expertise and experience required to supervise the Contract Services. CMAR's Representative shall communicate regularly with the Town but not less than once a week and shall be vested with the authority to act on behalf of the CMAR. CMAR's Representative may be replaced only with the written consent of the Town.

**2.2 Design Review and Analysis**

- 2.2.1** The CMAR will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.2.2** CMAR shall visit the Site, become familiar with local surface conditions, soils reports, environmental reports, archeological studies, etc. under which the Work is to be performed and correlate personal observations with requirements of the Contract Documents.
- 2.2.3** The CMAR will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMAR to construct the Project. After completion of design phase services, the CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.2.4** The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will familiarize itself with the evolving documents through the various design phases. The CMAR will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CMAR will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CMAR will recommend cost effective alternatives. The CMAR shall thoroughly familiarize themselves with the evolving documents through Construction Document Phase.
- 2.2.5** CMAR may be requested to provide the following but not exclusive services/deliverables:
- Project Review, to include a written evaluation of the Town's project program and project budget, each in terms of the other with recommendations on the appropriateness of each.
- Constructability Review, to include an analysis and report on the Construction Documents to indicate if they are consistent, coordinated, practical, feasible and constructible. CMAR shall notify the Town, that to the best of its knowledge, the work described in the plans and specifications for the various bidding packages is constructible within the Town's scheduled construction time.

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

Value Engineering, to include a review of the Site, foundations, systems, materials, construction feasibility, installation and construction costs, relative costs, and provide recommendations to the Town and Design Professional for economies as appropriate. The Design Professional shall have the full responsibility for the design of the Project and, in making its recommendations, the CMAR does not assume any responsibility or liability for anything included in or omitted from the plans and specifications.

- 2.2.6** It is not the CMAR's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CMAR recognizes that portions of the Construction Documents are at variance therewith, the CMAR shall promptly notify the Design Professional and Town in writing, describing the apparent variance or deficiency.

## **2.3 Schedule Development**

- 2.3.1** When Project requirements have been sufficiently identified but no later than 20 days after acceptance of plans and specifications, the CMAR shall prepare, and periodically update, a project schedule, based on a Critical Path Method (CPM) for the Design Professional's and Town's review and approval. The CMAR will develop and maintain the Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the Town. The CMAR will use scheduling software to develop the Project Schedule that is acceptable to the Town. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The CMAR will include and integrate in the Project Schedule the services and activities required of the Town, Design Professional and CMAR including all construction phase activities based on the input received from the Town and the Design Professional. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various design phase documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land and right-of-way acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by the Town. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between the activities, Town's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.
- 2.3.2** The Project Schedule will be updated and maintained by the CMAR throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work. The

CMAR will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMAR will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

## **2.4 Early Construction, Phased Construction and/or Long Lead Time Procurement**

**2.4.1** Early Construction and/or Long Lead Time Procurement, The Town and Design Professional may determine that, in order to meet the schedule established by the Town for the Project, the CMAR needs to provide early construction and/or order long lead time items. The early construction and/or long lead time item procurement shall be subject to the terms and conditions of the Contract Documents.

**2.4.2** Phased Construction, The CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work. They shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, and any other factors pertinent to saving time and cost.

If the Town determines that it is in their own best interest to phase the construction of the Work, the Town may direct the CMAR to provide a GMP for each phase and a phased Project schedule and construct the phased Work as prescribed by the Contract Documents.

**2.4.3** Long Lead Time Procurement, The CMAR shall recommend to the Town and Design Professional a list and a schedule for the procurement by the Town of long-lead time items which will be required to meet the Project Schedule.

**2.4.3.1** If the Town determines that it is in their own best interest to have the CMAR procure such long-lead time items, the Town may, at its sole discretion, direct the CMAR to solicit bids.

**2.4.3.2** Upon approval by the Town of the funding and of the terms and conditions of the purchase of said long-lead material, the Town will authorize the CMAR to issue purchase orders for the material. If necessary the Contract Price will be adjusted for these purchase orders.

**2.4.3.3** If the Town determines that it is in its own best interest to procure such long-lead time items, items may be procured by the Town on terms and conditions acceptable to the CMAR which acceptance the CMAR may not unreasonably withhold. Upon the Town's acceptance of the CMAR's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Town to the CMAR, who shall accept responsibility for such items as if procured by the CMAR in the first instance.

**2.4.3.4** If the Town chooses not to procure long lead-time items prior to acceptance of a GMP, the Design Professional shall list the items and a delivery schedule in the Construction Documents and the CMAR shall notify the potential suppliers, subcontractors, and fabricators of the required delivery schedule so that it shall be taken into consideration in their bid.

## **2.5 Cost Estimation**

**2.5.1** Unless otherwise agreed to by the Project Team, within 21 days after receipt of the documents for the various phases of design, the CMAR shall provide a detailed cost

estimate and a written review of the documents. The Design Professional and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the Town will make the final determination.

- 2.5.2** If any estimate submitted to the Town exceeds previously accepted estimates or the Town's Project budget, the CMAR shall make appropriate recommendations on methods and materials to the Town and Design Professional that they believe will bring the project back into the Project budget.
- 2.5.3** In between these milestone estimates, the CMAR shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CMAR to keep the Town and Design Professional informed as to the major trend changes in costs relative to the Town's budget.
- 2.5.4** If requested by the Town, the CMAR shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the Town in the financing process.

## **2.6 Competitive Bidding**

- 2.6.1** The CMAR shall develop bidder interest for each trade in the Work for approval by the Town and solicit bids for the various work categories. The CMAR shall distribute plans and specifications, and when appropriate, conduct pre-bid conferences with prospective bidders.
- 2.6.2** The CMAR may, at its option with Town approval, self perform portions of the Work (excavation, concrete, reinforcing steel, miscellaneous steel, structural steel, carpentry, etc.). If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below.
- 2.6.3** The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. The CMAR will prepare a list of recommended Subcontractors and suppliers for each category of work for the Town's review and approval. The CMAR shall provide a schedule of values based on the bids accepted from the successful Subcontractors and that information shall be incorporated into the GMP Amendment.
- 2.6.4** In the course of the Work, if events warrant, with Town approval, the CMAR may request to self perform work or contract with another Subcontractor without bidding in order to protect the project schedule and GMP.

## **2.7 Government Approvals and Permits**

- 2.7.1** Unless otherwise provided, CMAR shall obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project.
- 2.7.2** Copies of these permits and notices must be provided to the Town's Representative prior to starting the permitted activity.
- 2.7.3** Town shall be responsible for all Town controlled permit and review fees.
- 2.7.4** CMAR shall be responsible for all other permits and review fees not specifically controlled by the Town.

**2.7.5** CMAR is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CMAR 's responsibility.

## **2.8 Pre-construction Conference**

**2.8.1** After approval of the GMP and the amendment, to include bonds, insurance, and signatures, and prior to the commencement of any Work, the Town's Representative will schedule a Pre-construction conference.

**2.8.2** The purpose of this conference is to establish a working relationship between the CMAR, utility firms, and various Town agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, CMAR Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

**2.8.3** The construction Notice to Proceed date will be established.

**2.8.4** The CMAR attendees shall include, at a minimum, the CMAR's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CMAR's safety officer.

## **2.9 Control of the Work**

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

**2.9.2** CMAR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.9.3** CMAR or the CMAR's Superintendent shall at all times be present at the Work at all times that construction activities are taking place.

All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or their designated representative on the Site who shall have the authority to take actions required to properly carryout that particular element of the work.

In the event of noncompliance of this section, the Town may require the CMAR to stop or suspend the Work in whole or in part.

**2.9.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CMAR's responsibility to ensure the Subcontractor employed for such work is approved.

**2.9.5** Before ordering materials or doing work, the CMAR and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences,

which may be found, shall be submitted to the Town for resolution before proceeding with the work.

- 2.9.6** The CMAR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CMAR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Town at once.
- 2.9.7** The Contractor shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This work shall be performed or supervised by a licensed civil engineer or surveyor.
- 2.9.8** Any person employed by the CMAR or any Subcontractor who, in the opinion of the Town, does not perform their work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the Town, be removed from the Work by CMAR or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the Town. The CMAR or Subcontractor shall keep the Town harmless from damages or claims which may occur in the enforcement of this section.
- 2.9.9** CMAR assumes responsibility to Town for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Town and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.9.10** CMAR shall coordinate the activities of all Subcontractors. If the Town performs other work on the Project or at the Site with separate contractors under Town's control, CMAR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.10 Control of the Work Site**
- 2.10.1** Throughout all phases of construction, including suspension of Work, CMAR shall keep the Site reasonably free from debris, trash and construction wastes to permit CMAR to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CMAR shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Town to occupy the Project or a portion of the Project for its intended use.
- 2.10.2** CMAR shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CMAR shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.10.3** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CMAR. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CMAR.

**2.11 Shop Drawings, Product Data and Samples**

- 2.11.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.11.2** The CMAR shall review, approve, verify, and submit to the Town five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as to cause no delay in the Work or in the activities of the Town or of separate contractors. Submittals made by the CMAR, which are not required by the Contract Documents, may be returned without action.
- 2.11.3** The CMAR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Town and/or Design Professional. Such Work shall be in accordance with approved submittals.
- 2.11.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that the CMAR has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.11.5** The CMAR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Town's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CMAR has specifically informed the Town in writing of such deviation at the time of submittal and the Town has given written approval to the specific deviation. The CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Town 's approval thereof.
- 2.11.6** The CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Town on previous submittals.
- 2.11.7** Informational submittals upon which the Town is not expected to take responsive action may be so identified in the Contract Documents.
- 2.11.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Town shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.12 Quality Control, Testing and Inspection**

- 2.12.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- 2.12.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection of the Town.
- 2.12.3** The procedures and methods used to sample and test material will be determined by the Town.
- 2.12.4** The Town will select a pre-qualified consultant or Independent Testing Laboratory and will pay for initial Acceptance Testing.

When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CMAR. Construction contingency cannot be utilized for the cost of re-testing.

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

- 2.12.5 The CMAR will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.12.6 At the option of the Town, materials may be approved at the source of supply before delivery is started.
- 2.12.7 Code compliance special testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the Town, unless otherwise provided in the Contract Documents.
- 2.12.8 CMAR's convenience and quality control testing and inspections shall be the sole responsibility of the CMAR and paid by the CMAR.

## 2.13 Trade names and Substitutions

- 2.13.1 Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:
- 2.13.2 The substitution shall be submitted by CMAR in writing to the Town.
- 2.13.3 The CMAR shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.13.4 The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.13.5 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.13.6 The CMAR if requested by the Town shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.13.7 The Town will make the final decision and will notify the CMAR in writing as to whether the substitution has been accepted or rejected.
- 2.13.8 If the Town does not respond in a timely manner, the CMAR shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

## 2.14 Project Record Documents

- 2.14.1** During the construction period, the CMAR shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

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

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

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

Mark Project Record Drawings sets with red erasable colored pencil.

Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

The CMAR shall at the time of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the Town or its representative for review and comment.

- 2.14.2** Immediately upon receipt of the reviewed Project Record Drawings from the Town, the CMAR shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the Town:

A complete set of electronic Project Record Drawings prepared in AutoCad format. The Design Professional will provide files of the original Construction Documents to the CMAR for the use of preparing these final Project Record Drawings or the CMAR may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

A complete set of reproducible mylars from the final AutoCad drawings and five (5) half-size blackline sets reproduced electronically or from these mylars.

## **2.15 Project Safety**

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

- 2.15.2** CMAR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.15.3** CMAR shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CMAR's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- 2.15.4** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CMAR's personnel, Subcontractors and others as applicable.
- 2.15.5** CMAR and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Town-specific safety requirements set forth in the Contract Documents, provided that such Town-specific requirements do not violate any applicable Legal Requirement.
- 2.15.6** CMAR will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Town's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.15.7** CMAR's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.16 Warranty**

- 2.16.1** CMAR warrants to Town that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.16.2** CMAR's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CMAR or anyone for whose acts CMAR may be liable.
- 2.16.3** CMAR's warranty obligation shall be for two (2) years.
- 2.16.4** Nothing in this warranty is intended to limit any manufacturer's warranty which provides Town with greater warranty rights than set forth in this section or the Contract Documents. CMAR will provide Town with all manufacturers' warranties upon Substantial Completion.

## **2.17 Correction of Defective Work**

- 2.17.1** The CMAR shall be responsible for the completeness and accuracy of their reviews, reports, supporting data, and other work prepared or compiled under their obligation for this Agreement and shall correct work, at their expense. The fact that the Town has accepted, approved or paid for the CMAR's work shall in no way relieve the CMAR of any of their responsibilities.
- 2.17.2** CMAR agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.16 above, within a period of

two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the Town shall not constitute acceptance of Work not in accordance with the Contract Documents.

- 2.17.3** During the Duration of the Work, CMAR shall take meaningful steps to commence correction of such nonconforming Work as notified by the Town. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps during the Duration of the Work, the Town, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that Town will commence correction of such nonconforming Work with its own forces.
- 2.17.4** CMAR shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.17 above, within seven days of receipt of written notice from Town. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps within such seven day period, Town, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that Town will commence correction of such nonconforming Work with its own forces.
- 2.17.5** If the Town does perform such corrective Work, the CMAR shall be responsible for all reasonable costs incurred by Town in performing such correction.
- 2.17.6** For nonconforming Work that creates an emergency requiring an immediate response, the CMAR will respond and initiate corrections within twenty-four hours.
- 2.17.7** The two year period referenced above applies only to CMAR's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Town may have regarding CMAR's other obligations under the Contract Documents.

## **ARTICLE 3 - TOWN'S SERVICES AND RESPONSIBILITIES**

### **3.1 Duty to Cooperate**

- 3.1.1** Town shall, throughout the performance of the Contract Services, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner to facilitate CMAR's timely and efficient performance of the Contract Services and so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.

### **3.2 Information and Services**

- 3.2.1** Town shall furnish the CMAR, at no cost, the following information or services for this project:

- 

### **3.3 Town Representative**

- 3.3.1** The Town Representative shall be responsible for providing Town-supplied information and approvals in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents.
- 3.3.2** The Town Representative shall also provide CMAR with prompt notice if it observes any failure on the part of CMAR to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.
- 3.3.3** The Town Representative shall perform the responsibilities and possess the authority established in the Town of Tucson/Pima County Standard Specifications for Public Improvements, 2003 Edition, for the Engineer, including but not limited to:
- Administration of the Work
  - Review and certify the CMAR's Payment Requests.
  - Have authority to reject Work which does not conform to the Contract Documents.
  - Have authority to require additional inspection or testing of the Work.
  - Interpret and decide matters concerning performance under the requirements of the Contract Documents on written request of the CMAR. The Town Representative's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
  - Prepare Change Orders, and may authorize minor changes in the Work as provided herein.
  - Conduct inspections to determine Substantial Completion and Final Acceptance.

### **3.4 Design Professional Services**

- 3.4.1** The Town may contract separately with one or more Design Professionals to provide architectural and/or engineering design of the project. The Design Professional's contract as well as other firms hired by the Town shall be furnished to the CMAR. The CMAR shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the Town and Design Professional.
- 3.4.2** The Town may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
- Site visits at intervals appropriate to the stage of construction and as directed by the Town Representative to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the Town informed of progress of the Work, and will endeavor to guard the Town against defects and deficiencies in the Work.
  - The Design Professional will review and approve or take other appropriate action upon the CMAR's submittals such as Shop Drawings, Product Data and Samples.
  - The Design Professional may, as directed by the Town's Representative, prepare revised construction drawings and specifications needed to implement project cost reduction proposals from the CMAR.

### **3.5 Town's Separate Contractors**

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

**ARTICLE 4 - COMPLETION TIME****4.1 Completion Time.**

- 4.1.1 Completion Time shall be the times for performance of pre-construction services as stated in Section 4.2 below and for construction services as described in Section 4.3 below and the GMP Amendment.
- 4.1.2 CMAR agrees that it will commence performance of the Contract Services and achieve the Completion Time.
- 4.1.3 All of the times set forth in this Article shall be subject to adjustment in accordance with Article 5.

**4.2 Pre-construction Services**

- 4.2.1 Pre-construction services shall be completed by the date specified in the Construction Services Agreement.
- 4.2.2 Pre-construction services shall commence upon the Town issuing the Pre-Construction Notice to Proceed (NTP) for this Agreement, unless the parties mutually agree otherwise.

**4.3 Construction Schedule**

- 4.3.1 The GMP proposal as prescribed in Article 5 shall include a Critical Path Method (CPM) diagram construction schedule that will indicate the path of critical activities.
- 4.3.2 The CPM diagram construction schedule shall indicate duration, earliest and latest start and finish dates, and float times for all activities except critical activities and shall be presented in a time scaled graphical format for the Project as a whole.
- 4.3.3 The CPM diagram construction schedule shall also indicate all relationships between activities.
- 4.3.4 The CPM diagram construction schedule shall not contain more than one critical path.
- 4.3.5 The project schedule shall consider Town's occupancy requirements showing portions of the Project having occupancy priority, and Duration of the Work.
- 4.3.6 The CPM diagram construction schedule shall be based upon activities, which would coincide with the Schedule of Values.

**4.4 Duration of the Work**

- 4.4.1 The Town's approval of the GMP proposal will establish the Duration of the Work and guarantee Completion Times do not exceed the Town's established schedule for the Project.

**4.5 Liquidated Damages**

- 4.5.1 The CMAR understands that if Substantial Completion is not attained within the Completion Time as adjusted, Town will suffer damages which are difficult to determine and accurately specify. CMAR agrees that if Substantial Completion is not attained within the Completion

Time as adjusted, CMAR shall pay the Town an amount per day as specified in the GMP Amendment.

## **ARTICLE 5- CONTRACT PRICE**

### **5.1 Contract Price**

**5.1.1** The Contract Price will be the amounts prescribed in Section 5.2 below for pre-construction services plus the Guaranteed Maximum Price.

**5.1.2** The Contract Price is subject to adjustments made in accordance with the Construction Services Agreement.

**5.1.3** Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **5.2 Pre-construction Services**

**5.2.1** For pre-construction services performed by the CMAR that will not be covered by the GMP, and described in Section 5.3 below, the Town shall pay the CMAR a fee as specified in the Construction Services Agreement.

**5.2.2** If not available within the CMAR's staff, CMAR shall secure services of a qualified individual or firm to provide design plan and specifications review as required.

**5.2.3** If approved by the Town, the CMAR shall secure the services of a qualified cost estimating person or firm to provide cost estimating services required under this Agreement.

**5.3 Early Construction and/or Long Lead Time Procurement.** The total not-to-exceed amount as specified in the Construction Services Agreement.

### **5.4 Guaranteed Maximum Price (GMP)**

**5.4.1** The Guaranteed Maximum Price (GMP) is the sum of the maximum cost of the Work including the CMAR's construction fee, general conditions fee, sales tax, bonds, insurance costs, and contingency(ies). The CMAR guarantees to bring the Project within the GMP or they alone will be required to pay the difference between the actual cost and the GMP. Any savings of the CMAR's bid contingency at the conclusion of the bid process shall be returned to the Town. If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CMAR, will revert to Town. In the event the CMAR desires to maintain a Contractor's Contingency allowance within the GMP, the criteria for the development and use of that allowance must be acceptable to the Town. .

**5.4.2** Owner's Contingency are funds to be used at the sole discretion of the Owner. Owner's Contingency will be added to the GMP to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. At the time that the Owner's Contingency is used, the appropriate markups will be applied at that time.

**5.4.3** To expedite the preparation of the GMP Proposal, the CMAR shall obtain from the Design Professional, three sets of signed, sealed, and dated Construction Documents for the purpose of attaching to proposal only.

- 5.4.4** The CMAR shall prepare his GMP at the time requested by the Town based on the design documents as completed at that time. The CMAR shall mark the face of each document of each set used as the basis of the proposed GMP. The CMAR shall send one set of these documents to the Town's Representative, while keeping one set for himself and returning a set to the Design Professional.
- 5.4.5** The GMP proposal shall include:
- A list of the documents, with latest issuance date including all addenda thereto which were used in preparation of the GMP proposal.
  - A list of allowances and a statement of their basis.
  - A list of the clarifications and assumptions made by the CMAR in the preparation of the GMP proposal, to supplement the information contained in the documents.
  - A summary of the GMP with a total for each of the components of the GMP.
  - A schedule of values, with the estimated cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CMAR's construction phase fee.
  - A Critical Path Method (CPM) diagram construction schedule.
- 5.4.6** The CMAR shall meet with the Town and Design Professional to review the GMP Proposal and the written statement of its basis. In the event that the Town or Design Professional discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMAR, who shall make appropriate adjustments to the GMP Proposal, its basis or both.
- 5.4.7** Upon receiving the GMP proposal from the CMAR, the Town may submit the same documents that were used by CMAR in developing his GMP to an independent third party for review and verification. The third party shall develop an independent estimate and review the CPM schedule.
- 5.4.7.1** If the CMAR's GMP proposal is greater than the independent third party estimate, the Town may require the CMAR to reconfirm their proposal. The CMAR shall describe the differences between the two, and explain why their GMP reflects the approved scope of the Work and is correct. At this time the Town may do one of the following:
- If the Town accepts the CMAR's GMP proposal and the GMP proposal is within the Town's budget, the Town shall accept the CMAR's GMP proposal in writing.
  - If the Town accepts the CMAR's GMP Proposal and the GMP Proposal exceeds the Town's budget, the Town must indicate in writing to the CMAR that the budget has been increased to fund the excess cost.
  - If the Town rejects the CMAR's GMP Proposal because it exceeds either the Town's budget or the independent third party's estimate, the Town may terminate the CMAR's Contract.
- 5.4.8** The Town shall authorize and cause the Design Professional to revise the documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal. Such revised documents shall be furnished to the CMAR. The CMAR shall promptly notify the Design Professional and Town if such revised documents are inconsistent with the agreed-upon assumptions and clarifications.
- 5.5** **Phased GMPs.** The CMAR may be requested to provide individual GMP proposals for specific construction phases of this project. These individual phase GMP proposals shall be based on the specific phase construction documents, and will be prepared in accordance with the procedures identified in this Section.

**5.6 Markups for Changes.** If the GMP requires an adjustment due to changes in the Work, the markups below are the maximum that shall be allowed on such changes. These prescribed markups only apply to approved changes in the course of the Work and do not apply to the CMAR's preparation of the GMP.

- CMAR self-performed work and subcontractor work markups for overhead and profit shall be the actual or approved costs for equipment, material, and labor marked up by 10%.
- CMAR shall be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by 5%.
- CMAR shall be allowed to markup the cost for change order work for payment and performance bonds utilizing the same percentage used on the initial GMP.
- CMAR shall be allowed to markup the cost for change order work for any insurance, utilizing the same percentage used on the initial GMP.
- CMAR shall be allowed to markup the cost for change order work by 7.215% or the current, approved sales tax multiplier.

## STANDARD TERMS AND CONDITIONS

**SECTION 1.** The complete Contract includes all of the Contract Documents as if set forth in full herein. The Contract and all Contract Change Orders issued after the execution of the Contract, Addendum issued prior to the opening of the bids, the Special Provisions, the Project Plans, the Standard Plans, the Standard Specifications, the Waterworks Standards, Reference Specifications, the Contractor's Proposal, the Notice Inviting Bids, the Non-Collusion Affidavit, the Performance Bond, the Payment Bond and the Bidders Bond all of which are essential parts of this Contract as defined in Attachment 1. In the event of any conflict in these provisions, the terms of the Contract Documents shall control each over the other, in the order provided.

**SECTION 2.** The Contractor shall furnish all materials, except as otherwise provided in the Plans or Specifications, and will perform all the work for the project necessary to complete in a good, workmanlike and substantial manner the work in accordance with the Contract Documents for this Project. The Contract documents are specifically referred to and made a part hereof this Contract.

**SECTION 3.** The Town will pay the Contractor the negotiated amount for a base contract, subject to change of materials and work orders. The Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the Town subject to additions and/or reductions of the quantities of the various bid items at the unit prices bid for furnishing all labor and materials and for doing all the work contemplated and embraced under this Contract. The Contractor further agrees that:

- a. The Town will not pay any claim submitted to the Town by the Contractor unless the claim is **SUBMITTED IN WRITING** to the Town and **APPROVED BY THE TOWN IN WRITING BEFORE** any such work is started.
- b. The Town will not pay for any cost increases for labor and materials outside the original prices as set forth in the Bid Schedule unless **SUBMITTED IN WRITING** to the Town and **AGREED TO IN WRITING** by the Town **IN ADVANCE**.
- c. In the event of unforeseen difficulties or obstructions arising out of the nature of the work to be performed are encountered by the Contractor, the Contractor **SHALL NOT MOVE FORWARD** with any additional work until that work is **APPROVED IN WRITING** by the Town's Project Manager.
- d. The Contractor shall be responsible for all expenses incurred by or in consequence of the suspension and/or discontinuance of work **CAUSED BY** Contractor.
- e. The Contractor shall faithfully complete the work in the manner and in accordance with the Contract Documents and the requirements of the Town's Project Manager under them.
- f. Any additional charges incurred without **WRITTEN CONSENT** of the Town shall be considered incidental costs to the Contract with **NO COST** to the Town.

**SECTION 4.** TIME IS OF THE ESSENCE for this Contract. The Contractor agrees to commence work pursuant to this Contract within 7 calendar days after the date of authorization specified in the Notice to Proceed and to diligently prosecute the same, day to day, to completion within the agreed to completion time except as adjusted by subsequent Contract Change Order(s). All additional work, when authorized by executed Change Order(s) shall be compensated for by a fee as mutually agreed upon by the Town and Contractor.

When a contractor submits a request for a date extension for which work must be completed in a contract, a written Contract Change Order shall be initiated outlining the reason for applying for the extension and the drop-dead date the work will be completed. If the extension is agreed to and signed by the Town and the Contractor, it binds the Contractor to complete the work by the extended date designated in the amendment unless the delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor. It is agreed the Town's only liability for delay from any cause shall be limited to granting a time extension to the Contractor. There is no other obligation, expressed or implied, on part of the Town to the Contractor for delay from any cause.

**SECTION 5.** If the work to be performed by Contractor for this Contract is not timely completed, the Contractor shall pay to the Town the stated amount as liquidated damages for each day the work remains incomplete after the scheduled completion date. The scheduled completion date for determining liability for liquidated damages shall be agreed to in writing prior to the start of construction.

For the purpose of determining applicability of liquidated damages, completion time shall be extended only if delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor per Section 6.

**SECTION 6.** Force Majeure: Notwithstanding any other term, condition, or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, nationwide material shortages, war, civil disturbances, unusual weather conditions, natural disasters, acts of God, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events and must be agreed to IN WRITING BY BOTH PARTIES.

**SECTION 7** The Contractor agrees to indemnify, defend, and save harmless the Town, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from all losses, claims, suits, demands, expenses, subrogations, attorney's fees, or actions of any kind and nature arising out of the Contractor's negligence or any subcontractor employed by the Contractor including bodily injury and death, damages to any property or any other losses, claims, suits, demands, and/or expenses, arising or alleged to have arisen out of the work performed, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in Section 8 will in no way be construed as limiting the scope of indemnity in this paragraph.

**SECTION 8.** The Contractor agrees to obtain Insurance Coverage of the types and amounts as required in the Pima County/City of Tucson Standard Specifications for Public Improvements (Standard Specifications) and keep the Insurance Coverage in force until all work has been completed and the completed project has successfully completed its warranty period. The Contractor shall furnish the Town with a Certificate evidencing liability insurance policy or policies with the minimum insurance limits as indicated. All policies will contain an endorsement providing that written notice be given to the Town at least thirty (30) calendar days prior to termination, cancellation or reduction in coverage in any policy.

**SECTION 9.** This Contract may be terminated at any time by mutual written consent, or by the Town, with or without cause, upon giving thirty (30) days written notice. If this Contract is terminated, the Town shall be liable only for payment for services rendered and accepted by the Town before the effective date of termination.

The Town reserves the right to terminate in whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The Town will issue a written notice of default to the Contractor for failing to perform the stipulations, conditions or services/specifications required in this Contract. The Contractor shall have 5 days from receipt of the notice to rectify the failure or establish a plan for remedy. Contractor shall provide documentation of the remedy or proposed plan for approval by the Town.

The Town may terminate this Contract for cause if:

- A. In the opinion of the Town, the Contractor attempts to impose personnel, materials or services of an unacceptable quality;
- B. In the opinion of the Town, the Contractor fails to furnish the required services and/or product within the time stipulated in the Contract;
- C. In the opinion of the Town, the Contractor fails to make progress in the performance of the requirements of the Contract;
- D. The Contractor gives the Town a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

If funds that are appropriated or allocated for the payment of obligations under this Contract are not allocated by the Town and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the Town at the end of the period for which funds are available. The Town will notify the Contractor in the event that continued service will or may be affected by non-appropriation. No

penalty shall accrue to the Town in the event that this provision is exercised, and the Town shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

Upon Notice of Termination the Contractor shall apprise the work the Contractor has completed and submit this appraisal to the Town for evaluation.

The Contractor shall receive as compensation for services performed through the date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of the Contractor fee described in this Contract and shall be in the amount mutually agreed to between the Contractor and the Town. The Town shall make this final payment within sixty (60) days after the Contractor has delivered the last of the partially completed items or service.

Notice required under this section shall be in writing and shall be served by certified mail upon the other party. When served by certified mail, services shall be conclusively deemed made five (5) days after posting thereof in the United States mail, postage prepaid.

**SECTION 10.** The Contractor agrees that any inspection by the Town Representative or by other agents or employees of the Town of the work performed is for the purpose of ensuring the technical competence of the work and adherence to other contractual provisions. Inspections are not for the purpose of safeguarding workers on the job, which is the sole responsibility of the Contractor.

The Contractor warrants that he/she is fully familiar with all the safety requirements of the Occupational Safety and Health Act as promulgated by the Federal Government and as implemented by the State of Arizona, and that he/she will be solely responsible for implementing and enforcing the same at all times.

**SECTION 11.** The Contractor agrees to accomplish the work with a minimum of traffic interruption. If it becomes necessary to close any traffic lanes on any street within the Town, permission must first be obtained from the Town Engineer's Office. Permission shall be requested at least 48 hours in advance for residential streets and 72 hours in advance for arterial streets. The Contractor shall furnish and place all detour signs and any other warning signs in accordance with the SPECIAL PROVISIONS.

**SECTION 12.** Should the Town bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Contract, the Town shall recover, in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

**SECTION 13.** It is agreed that the Town Project Manager or his/her designee is authorized to execute Contract Change Order(s) necessary to the prosecution of the work, all in accordance with the Standard Specifications.

**SECTION 14.** The Contractor agrees that he/she will not proceed with any extra work unless he/she has been authorized in writing to do so by the Town Project Manager or his/her designee prior to the commencement of any extra work.

**SECTION 15.** The Parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all the provisions herein contained. Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor without prior written consent of the Town.

**SECTION 16.** The Contractor shall cause the Performance Bond and Payment Bond to remain in full force and effect through the warranty and guarantee period. By my signature hereunder, as Contractor, I agree to keep the Performance Bond and Payment Bond or cashier's check in equivalent of the full Performance Bond and Payment Bond in full force and effect through said period. The cashier's check shall serve the same purposes and fully cover the requirements of a Performance Bond and a Payment Bond.

**SECTION 17.** By my signature hereunder, as Contractor, I certify that I will comply with all provisions of this agreement.

**SECTION 18.** By my signature hereunder, as Contractor, I agree that even if only one (1) Progress Payment is prosecuted by the Town of Oro Valley for this Project, the Town will retain ten percent (10%) of the Progress Payment amount. The ten percent (10%) retention will be discharged in accordance with the Standard Specifications.

**SECTION 19.** By my signature hereunder, as Contractor, I agree that I am not an employee of the Town, and that I am performing the duties as an Independent Contractor, supplying my own employees, and maintaining my own insurance and handling all of my own internal accounting. The Town in no way controls, directs or has any direct responsibility for the actions of the Contractor.

By my signature hereunder, as Contractor, I agree that I shall be responsible for the compliance with the United States Immigration Reform and Control Act of 1986, and shall indemnify and hold harmless the Town for any liability arising from failure of the Contractor to comply with this Act. This indemnification includes the costs of suit.

By my signature hereunder, as Contractor, I agree that I shall be responsible for compliance with the Americans With Disabilities Act of 1990 and shall indemnify and hold harmless the Town for any liability arising from failure of the Contractor to comply with this act. This indemnification includes the costs of suit.

**SECTION 20.** By their signatures hereunder, as Contractor and Town, the Parties agree to be bound by all applicable Federal and State regulations governing Equal Opportunity and Non-Discrimination.

**SECTION 21.** Pursuant to the requirements of Arizona Revised Statutes, Title 34, the Town will require both of the following documents to be completed and submitted before the final payment is made and retainage is released.

1. A certification from the Prime Contractor that all bona fide project claims and bills from his/her subcontractors and suppliers have been paid, and that all his/her project claims against the Town have been resolved (CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS).
2. The consent of surety affidavit signed by an authorized representative of the surety (CONSENT OF SURETY TO FINAL PAYMENT AND FULL RELEASE OF CONTRACT RETAINAGE OR SUBSTITUTE SECURITIES).

The Town of Oro Valley reserves the right to obtain from the Contractor "satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work".

**SECTION 22.** This Contract is subject to the provisions of A.R.S. § 38-511 which provides in pertinent part that the state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a Contractor to any other party to the Contract with respect to the subject matter of the Contract.

**SECTION 23.** In accordance with A.R.S. §35-391, the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Sudan. In accordance with A.R.S. §35-393, the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Iran.

**SECTION 24.** The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees". Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are Contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any of Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**SECTION 25.** This is the entire Contract between the parties. If any portion(s) of this Contract is (are) later found to be invalid or unenforceable, such portion(s) shall be null and void and without any effect on the rest of the Contract which shall continue in full force and effect.

## FORMS

**PERFORMANCE BOND**  
(100% of Total Contract Amount)

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the Town of Oro Valley, State of Arizona, has awarded to \_\_\_\_\_, as principal, designated as the "Contractor", a "Contract" for the work generally described as follows:

**PROJECT NO.** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_

**WHEREAS**, said Contractor is required to furnish a bond in connection with Contract guaranteeing performance and this bond shall remain in full force and effect through the warranty and guarantee period of the Contract.

**NOW THEREFORE**, we the undersigned Contractor and Surety, are held and firmly bound unto the Town of Oro Valley in the sum of \_\_\_\_\_ (Dollars)

(\$ \_\_\_\_\_), to be paid to the Town or its attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH,**

The above Contractor, his/her or its heirs, executors, administrators, successors or assigns, shall in all things stand to, abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract and any alteration made as provided, on his/her or their part to be kept and performed at the time and in the manner specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Town of Oro Valley, its officers, employees and agents, as therein stipulated. It shall be and remain in full force and virtue until such time the project is completed then this obligation shall become null and void. In the event suit is brought upon this bond by the Town and judgment is recovered, the Surety shall pay all costs incurred by the Town in the suit, including reasonable attorneys' fees to be fixed by the court.

**IN WITNESS WHEREOF**, we have hereunto set our hands, and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR:**

**SURETY:**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. No.: \_\_\_\_\_

Tel. No.: \_\_\_\_\_

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

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

Attorney-in-Fact

**NOTE: This bond must be executed by both parties, and in the case of a corporation, with corporate seal affixed. All signatures must be acknowledged. (Attach acknowledgments.) The attorney-in-fact for the bonding company must be registered in at least one county in the State of Arizona.**



**PAYMENT BOND**  
(100% of Total Contract Amount)

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS,** the Town of Oro Valley, State of Arizona, has awarded to \_\_\_\_\_, as principal, hereinafter designated as the "Contractor", a "Contract" for the work generally described as follows:

**PROJECT NO:** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_

**WHEREAS,** Contractor is required to furnish a bond in connection with the Contract, to secure the payment of claims of laborers, mechanics, material men and other persons as provided by law.

**NOW THEREFORE,** we the undersigned Contractor and Surety are held and firmly bound unto the Town of Oro Valley in the sum of \_\_\_\_\_ (Dollars), (\$ \_\_\_\_\_) for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH,**

If Contractor, his/her or its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any of the persons named in, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any claimant, or any amounts required to be deducted, withheld, and paid over to the Tax Board from the wages of employees of the Contractor and his/her subcontractors, pursuant to the Revenue and Taxation Code, with respect to work and labor, that the Surety or Sureties will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the Town and judgment is recovered, the Surety shall pay all costs incurred by the Town in the suit, including reasonable attorneys' fees to be fixed by the court.

This bond shall inure to the benefit of any of the persons named as to give a right of action to such persons or their assigns in any suit brought upon this bond.

**IN WITNESS WHEREOF,** we have hereunto set our hands, and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Tel. No.: \_\_\_\_\_  
By: \_\_\_\_\_

**SURETY:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Tel. No.: \_\_\_\_\_  
By: \_\_\_\_\_  
Attorney-in-Fact

**NOTE: This bond must be executed by both parties, and in the case of a corporation, with corporate seal affixed. All signatures must be acknowledged. (Attach acknowledgments.) The Attorney-in-fact for the bonding company must be registered in at least one county in the State of Arizona.**

**CORPORATE ACKNOWLEDGEMENT(S)**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/she reside(s) in Pima County, Arizona and that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation which executed the Contract; that he/she knows the seal of the corporation; that the seal affixed to the instrument is the corporate seal; that is/was so affixed by order of the Board of Directors of the corporation, and that he/she signed his/her name to the instrument by like order.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to this instrument as the Attorney-in-Fact of \_\_\_\_\_ and acknowledged to me that he/she subscribed the name of \_\_\_\_\_ as Surety, and his/her own name as Attorney-in-Fact.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_





**ATTACHMENT 1  
DEFINITION OF TERMS**

<b>Addendum</b>	Written or graphic instrument(s) issued in writing, after advertisement, but prior to the opening of the Bids, which alter, change, clarify, correct, modify or revise the Contract Documents.
<b>Bid</b>	The offer of the bidder, submitted on the prescribed form(s) to perform the Work and/or furnish material(s) and/or furnish labor and/or furnish equipment at the price(s) quoted.
<b>Change Order</b>	A written order, issued and signed by the Town Project Manger or designee to the Contractor, directing addition(s), deletion(s) or revision(s) in the Work, adjustment in Contract Price(s) or Contract Time, said Change Order(s) is/are issued after the execution of the Contract, all as incidental to the prosecution of the Work as advertised.
<b>Contract</b>	The written agreement between the Town and the contractor setting forth the obligations of the parties thereunder including, but not limited to, the performance of the work, the furnishing of labor and materials and the basis of payment.
<b>Liquidated Damages</b>	The monetary damages amount that the parties to the Contract shall be paid to the Town by the Contractor for each day the work remains incomplete after the scheduled completion date. The Liquidated Damages amount will be set in accordance with Section 108 of the Pima County/City of Tucson Standard Specifications for Public Improvements (2003 EDITION).
<b>Non-Collusion Affidavit</b>	Certification on behalf of the person, firm, association or corporation submitting he bid, that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid.
<b>Payment Bond</b>	The security provided by the contractor solely for the protection of claimants supplying labor and materials to the contractor or to subcontractors of the contractor.
<b>Performance Bond</b>	The security provided by the contractor solely for the protection of the contracting agency and conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof.
<b>Project Manager</b>	The Town designee in direct charge of the Project and responsible for the completion of the project according to the provisions of the Contract.
<b>Project Plans</b>	Specific details and dimensions peculiar to the work which are supplemented by the standard details insofar as they may apply.
<b>Reference Specifications</b>	Any specifications referred to in the Contract Documents other than Standard requirements peculiar to an individual project.
<b>Special Provisions</b>	Additions and revisions to the Standard Specifications covering conditions and Specifications, including, but not limited to: bulletins, standards, rules, methods of analysis or tests, codes, other agency specifications, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the latest edition, including amendments in effect and published at the time of advertising the Project or issuing the permit, unless otherwise specifically referred to by edition, volume or date.
<b>Standard Plans</b>	The latest edition of the CITY OF TUCSON/PIMA COUNTY STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS, including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the City of Tucson and Pima County as approved for repetitive use, showing details to be utilized where appropriate (2003 EDITION).

**Standard  
Specifications**

The latest edition of the CITY OF TUCSON / PIMA COUNTY STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS, including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the departments of Transportation of the City of Tucson and Pima County as approved for general application and repetitive use (2003 Edition).

**Waterworks  
Standards**

The latest edition of the CITY OF TUCSON WATERWORKS STANDARD SPECIFICATIONS AND DETAILS, unless modified within the Plans and/or the Standard Notes and Detail Plan Sheet for the Town of Oro Valley Water Utility.

**OFFER**

**TO THE TOWN OF ORO VALLEY:**

The Undersigned hereby offers and agrees to enter into negotiations in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Qualifications which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

\_\_\_\_\_  
Company Name

Name: \_\_\_\_\_

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Town                      State                      Zip

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

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Title