



CITY OF COOLIDGE

**REQUEST FOR QUALIFICATIONS
FOR
CONSTRUCTION MANAGER AT RISK
FOR THE
AQUATICS CENTER AND NORTHERN AVENUE
RECONSTRUCTION**

CITY OF COOLIDGE, ARIZONA

REQUEST FOR STATEMENT OF QUALIFICATIONS

**AQUATICS CENTER AND NORTHERN AVENUE RECONSTRUCTION –
CONSTRUCTION MANAGER AT RISK SERVICES**

The City of Coolidge requests Statements of Qualifications (SOQs) for Construction Manager at Risk Services for the construction of an Aquatics Center and Northern Avenue Reconstruction.

Each response shall be in accordance with the SOQ instructions and scope of work package on file with the City Clerk at City Hall, 130 W. Central Avenue, Coolidge, Arizona, 85128. Copies can be obtained by calling the City Clerk's Office (520) 723-6000, or by downloading a complete packet at the City's website: www.coolidgeaz.com.

All responses must be submitted by 1:00 pm local time on **Thursday, March 26, 2020** to the City Clerk, 130 W. Central Avenue, Coolidge, Arizona 85128. The responses will be evaluated in accordance with Section four (4) of the SOQ.

Responses must be addressed to:

**Office of the City Clerk
City of Coolidge
130 W. Central Avenue
Coolidge, Arizona 85128**

The envelope must be boldly marked:

**STATEMENT OF QUALIFICATIONS
Aquatics Center and Northern Avenue Reconstruction – Construction
Manager at Risk Services**

The City of Coolidge reserves the right to waive any informalities or irregularities in this Statement of Qualifications solicitation, or to reject any or all responses; to be the sole judge of the suitability of the services and materials offered, and to award a contract for the furnishing of the services it deems to be in the best interest of the City.

/s/ Rick Miller City Manager

TABLE OF CONTENTS

Section	Page
SECTION 1: PROJECT DESCRIPTION	5
SECTION 2: SCOPE OF WORK	5
SECTION 3: SUBMITTAL ELEMENTS	6
SECTION 4: INTERVIEW	9
SECTION 5: SELECTION PROCESS	9
SECTION 6: PROPOSED SCHEDULE OF EVENTS	10
SECTION 7: GENERAL TERMS, CONDITIONS, AND INSTRUCTIONS	10
APPENDIX "A" PROJECT AREA	17
APPENDIX "B" SAMPLE CONTRACT FORMS	19
APPENDIX "C" REQUIRED SUBMITTAL FORMS	75

SECTION 1: PROJECT DESCRIPTION

The City of Coolidge (City) is seeking a qualified Construction Manager at Risk (CMAR) to provide preconstruction services and complete construction services as the CMAR for the Aquatics Center and Northern Avenue Reconstruction, herein after referred to as “the Project.” This CMAR is intended to provide pre-construction services up to and including creation of a guaranteed maximum price for construction, and then execute construction of the project. These services are intended to be provided under two separate Contracts.

The Project is intended to upgrade and redesign an existing aquatics center and roadway to fit the needs of the community. The aquatics property is owned by the Coolidge Unified School District; however it is maintained by the City’s Parks Division, the roadway is owned by the City of Coolidge and maintained by the City Streets Division. All appurtenant and ancillary work and material required for the construction of the proposed project are intended to be provided by the selected CMAR.

The project design team shall provide construction plans which divide construction of this project into multiple phases; however it is expected that each phase may be required to be constructed concurrently to meet construction deadlines.

Design efforts for this project will be performed concurrent with the pre-construction services to be provided by the selected CMAR. During this phase of the project the CMAR will be required to actively participate in value-engineering and cost estimating of the design. Value engineering of the project shall include determination of design parameters as necessary to ensure project can be designed and constructed within budget and deadline constraints.

The budget for this project is anticipated to be approximately \$5 million as a maximum amount for the project.

SECTION 2: SCOPE OF WORK

PRE-CONSTRUCTION SERVICES

The CMAR, in collaboration with the design team, will be responsible to provide pre-construction services resulting in a guaranteed maximum price (GMP) proposal for construction. The CMAR and the City will enter into a Preconstruction Contract for an agreed upon fee.

The CMAR will work as a partner to the design team to provide a project which can be constructed within the constraints of the project budget and schedule. It is anticipated that this project must be substantially complete and operational by 05/03/2021.

As a collaborative partner of the design team the CMAR shall be responsible for providing services such as:

- Preliminary cost estimating to be used for determination of construction costs

- Provide input regarding means and methods which may reduce costs and improve constructability
- Provide for construction phasing and scheduling that maximizes budget and ability to complete full project.
- Provide long-lead procurement studies and initiate procurement of long-lead items as may be directed
- Participate in permitting processes
- Input regarding material selection
- Provide input regarding alternate solutions/methods which may reduce costs and improve constructability

CONSTRUCTION SERVICES

It is the intent of this project that, should approval be granted, the CMAR would provide for construction services required to provide complete construction of the facilities designed. This contract would be issued based upon the GMP negotiated with the CMAR at the conclusion of the pre-construction services project phase.

During the construction phase, the CMAR shall be required to continue in a partnering role with the City and the design team for the successful completion of the project. The CMAR will also be required to take a lead-role in interactions in coordination of efforts with the City, other agencies and utilities, as well as property-owners and residents who may be affected by construction of this project. The CMAR will be expected to maintain a positive and professional working relationship with all parties throughout the project.

SECTION 3: SUBMITTAL ELEMENTS

The CMAR will be selected through a qualifications-based selection process. Firms interested in providing CMAR services must submit a Statement of Qualifications (SOQ) that meets the criteria set forth in this section. Information included in the SOQ response will be used to evaluate your firm as part of any criteria, regardless of where that information is found in the SOQ. Information obtained from the SOQ and from any other relevant source, including independent investigation by the City, may be used in the evaluation and selection process. Further details of submittal requirements are contained in Section 7 of this solicitation.

To be considered, each SOQ must address each of the following items:

1. Experience and Qualification of Firm (30 Points Possible)

- 1.1. Provide a general description of the firm and/or team that is proposing to provide construction management services and general construction services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.

- 1.2. Provide the following information:
 - 1.2.1. List the Arizona professional and contractor license(s) held by the firm/team. Provide the license number and explain if held by an individual or the firm.
 - 1.2.2. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last 5 years. Identify any claims arising from a contract, which resulted in litigation or arbitration within the last 3 years. Briefly describe the circumstances and the outcomes.
 - 1.2.3. If selected as a finalist for this project, you will be required to provide a statement from an A- or better surety company describing the Company's bonding capacity.
- 1.3. Identify at least three (3) projects comparable to the Aquatics and Northern Avenue Reconstruction in which the firm served as either CMAR, agency Construction Manager during design and construction phases (without providing construction services), or as General Contractor. Special consideration will be given to firms that have provided Construction Manager at Risk services on similar successful projects. For each project identified, provide the following:
 - 1.3.1. Description of the project
 - 1.3.2. Role of the firm (specify whether Construction Manager at Risk, Construction Manager or General Contractor. If CMAR or General Contractor, identify the percent of work self-performed. Also specify services provided during design phase, i.e. cost estimating, scheduling, value engineering, etc.)
 - 1.3.3. Original contracted construction cost and final construction cost for each Project
 - 1.3.4. Construction dates
 - 1.3.5. Project owner
 - 1.3.6. Reference information (two current names with telephone numbers per project)

2. Experience of key personnel assigned to this project (20 Points Possible)

- 2.1. Identify all key personnel for the proposed project team. For each key person identified, list their length of time with the firm and at least two (2) comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide

just the project name and the role of the key person. For other projects provide the following:

2.1.1. Description of project

2.1.2. Role of the person

2.1.3. Original contracted construction cost and final construction cost for each Project

2.1.4. Construction dates

2.1.5. Project owner

2.1.6. Reference information (two current names with telephone numbers per project)

3. Approach to Performing the Required Services (30 Points Possible)

3.1. Describe any potential opportunities for implementation of value-engineering or other means through which you believe cost savings and/or reduction in scheduling may be achieved.

3.2. Discuss the major issues such as: construction sequencing, providing safe work conditions and early procurement of long-lead items that your team has identified on this project, and how you intend to address those issues.

3.3. Describe your firm's project management approach and team organization during design and construction phase to address major issues. Describe systems used for planning, scheduling, cost estimating and managing construction. Briefly describe the firm's experience in quality control, dispute resolution, and safety management.

4. Principal office location and local participation (10 Points Possible)

The City desires strong local participation in this project. Describe your firm's approach to maximize utilization of local resources, to include as a minimum, local suppliers, equipment providers, subcontractors, and laborers. Identify the location of the firm's principal office and the home office location of key staff on this project. Identify local (i.e. presently living in or relocating to the Valley) vs. non-local staffing of your team, and the percent of their work expected to be done locally.

5. Subcontractor Selection Plan (10 Points Possible)

Interested Contractors shall include in their submittal a proposed subcontractor selection plan. The proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

SECTION 4: INTERVIEW

Should the City decide to hold interviews, at least three (3), but no more than five (5), firms shall be interviewed. Should interviews be held, the following criteria shall be used:

1. **Overall approach and Methodology (25 points possible)**

The construction manager shall demonstrate their plan for performing the work on this project. Additional instructions as well as supplementary information may be provided to finalists prior to interview.

2. **Proposed project staff (25 points possible)**

Note that primary staff to be assigned to this project must be at the interview and able to discuss their role in the project. Briefly describe roles and experience of each staff member and how staff will work as a coordinated team in execution of the project.

3. **Knowledge of site and local conditions (25 points possible)**

Questions shall be asked to determine candidate's understanding of the project site/alignment and understanding of constraints and challenges presented by the existing conditions and proposed alignment.

4. **Project scheduling (25 points possible)**

The construction manager shall provide details of proposed procedures for scheduling and for compliance controls and provide examples of representative current or past projects. Construction manager will be expected to propose a scheduling methodology for this project in particular. Provide details of challenges in meeting scheduled deadline, and proposals of ideas for overcoming these challenges.

Interviews, if held, shall be no longer than 45 minutes in total length. Candidates shall be allowed up to fifteen (15) minutes to provide an introductory presentation, with the remainder of the time being allotted for questions from the interview committee.

SECTION 5: SELECTION PROCESS

A selection committee shall be formed including representatives of the City of Coolidge, the Coolidge Unified School District, and a member of the community. This Committee will read, review and evaluate each submittal independently based on the evaluation criteria. A point formula system will be used to evaluate the submittals. A "final list" will be constructed based on the score of the initial evaluations. The City may, however, call firms to clarify information received in the submittal. A short-list of no less than three, and no more than five, firms will be generated from submittals received. Firms selected for this short-list may, if determined necessary, be interviewed and scored by members of the selection committee.

Final selection shall be based upon the results of the evaluation of statements of qualifications and performance data submitted or, if interviews are held, the combined results of those items and results of interviews. Firms on the final list shall be ranked, and the City will enter into negotiations with the highest ranking firm.

Upon completion of the selection process and the identification of the best qualified firm, the City shall enter into negotiations with the selected firm and execute a pre-construction contract following completion of negotiation of fees and any contract terms for Council consideration. A sample of the form of Contract to be executed is included as Appendix “B” in this solicitation. If the City is unable to successfully negotiate a contract with the highest ranking firm, the City may then negotiate with the second or third most qualified until a contract is reached or may terminate the selection process.

SECTION 6: PROPOSED SCHEDULE OF EVENTS

Scheduling is a critical component of this project. To meet anticipated demands, it is projected that this project must be substantially complete no later than May 3, 2021. As such this Calendar of Events is an integral part of the Submittal Requirements and Contract Documents. The City, however, reserves the right to alter these timelines as necessary in the best interest of the City and to accommodate scheduling difficulties relating to interviews or Council selection of the Contractor. All times refer to Local Time, as kept by the City Clerk.

Event	Description	Date
1.	Request for Qualifications Publication	02/26/2020
2.	Submittal Deadline	03/26/2020
3.	Notify final-list selected construction managers	04/02/2020
4.	Interviews of finalists (if held)	04/09/2020
5.	Provide notification of rankings and selection	04/10/2020
6.	Anticipated Council approval of selected CMAR	04/27/2020
7.	Anticipated Commence Pre-Construction Services	05/04/2020
8.	Anticipated Start of Construction	08/31/2020
9.	Anticipated Substantial Completion	05/03/2021

SECTION 7: GENERAL TERMS, CONDITIONS, AND INSTRUCTIONS

1. Definition of Terms Used in These Instructions

As used in these instructions, the following terms have the following meaning:

- A. “Attachments” means all items required of the Submitter as a part of the submittal.
- B. “Days” means calendar days unless otherwise specified.
- C. “Exhibits” means all items attached to the solicitation.
- D. “Submittal” means bid, submittal, quotation, and qualifications.
- E. “Submitter” means a vendor or provider who responds to any type of solicitation.
- F. “Contracts Manager” means the person duly authorized to enter into and administer contracts and make written determinations with respect to the contract or his or her designee. For the City of Coolidge, that shall mean the Project Manager.
- G. “Solicitation” means an invitation for bids (IFB), a request for submittals (RFP), or a request for qualifications (RFQ).

2. Preparation of Submittal

- A. Copies of Submittal. To be considered responsive, one original (clearly marked as “original”) and seven copies of the SOQ must be received by the deadline in a sealed envelope or box with the Description (CMAR – Aquatics Center and Northern Avenue Reconstruction) and the submitter’s name and address clearly indicated on the package. The original must bear the original signature of an authorized representative of the submitter on the acknowledgement provided.
- B. Forms: No Facsimile or Telegraphic Submittals. A submittal shall be made either on the forms provided in this solicitation or their substantial equivalent. Any substitute document for the forms provided in this solicitation shall be legible and contain the same information requested on the form. A facsimile, telegraphic, or mailgram submittal shall be rejected.
- C. Typed or Ink Corrections. The submittal must be typed or in ink. Erasures, interlineations or other modifications in the submittal must be initialed in ink by the person signing the submittal. Modifications shall not be permitted after submittals have been opened except as otherwise provided under applicable law.
- D. Duty to Examine. It is the responsibility of each submitter to examine the entire solicitation, seek clarification in writing, and check its submittal for accuracy before submitting the submittal. Lack of care in preparing a submittal shall not be grounds for withdrawing the submittal after the submittal due date and time nor shall it give rise to any contract claim.

- E. Amendments. Each solicitation amendment, if any, shall be signed with an original signature by the person signing the submittal, and shall be submitted no later than the submittal due date and time. Failure to return a signed copy of a material solicitation amendment may result in rejection of the submittal.
- F. Submittal Amendment or Withdrawal. A submittal may not be amended or withdrawn after the submittal due date and time except as otherwise provided under the City's Procurement Code or other applicable law.
- G. Public Record. Under applicable law, all submittals submitted and opened are public records and must be retained by the City of Coolidge. Submittals shall be open to public inspection after contract award, except for such submittals deemed to be confidential by the City of Coolidge. If a submitter believes that information in its submittal should remain confidential, it shall stamp as confidential that information and submit a statement with its submittal detailing the reasons that information should not be disclosed. The City of Coolidge shall make a determination pursuant to the City of Coolidge's Procurement Code and the Public Records laws of the State of Arizona.
- H. Exceptions to Terms and Conditions. A submittal that takes exception to a material requirement of any part of the solicitation, including a material term and condition of any proposed contract, may be rejected. Exceptions to the submittal documents shall be clearly set forth in an attachment to the submittal.
- I. Release of Project Information. The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City.
- J. Non-compliant Submittals to be Rejected. Submitters are advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:
- Receipt of submittal by the specified cut-off date and time.
 - Failure to deposit the submittal in the appropriate location.

These failures will result in disqualification and no action of the City, including late acceptance by the City Clerk, shall act to waive or otherwise affect the disqualification.

- K. City Rights. The City of Coolidge reserves the right to reject any or all Submittals and, except as set forth in subsection (j) above, to waive any informality or irregularity in any Submittal received, to be the sole judge of

the merits of the respective Submittals received, and to cancel any solicitation if deemed to be in the interest of the City to do so.

3. Inquiries

- A. Solicitation Contact Person; Other Contact Prohibited. Any inquiry related to a solicitation shall be directed solely to the City of Coolidge Project Manager identified in this proposal. The submitter shall not contact or direct inquires concerning this solicitation to any other employee unless the solicitation specifically identifies a person other than the Project Manager as a contact. All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. The Project Manager/Contact Person(s) for this Solicitation shall be:

Ricky LaPaglia
660 S. Main St.
Coolidge, AZ 85128
rlapaglia@coolidgeaz.com

- B. Submission of Inquiries. All inquiries are to be submitted via email ONLY. Each inquiry shall clearly refer to this solicitation in the subject line of the email. A list of all inquiries received, and responses by the city, shall be generated and be made available to all interested parties via posting on the City's website seven (7) days prior to the submittal deadline.
- C. Timeliness. Any inquiry should be submitted at least seven (7) days before the submittal due date and time. Failure to do so may result in the inquiry not being answered.
- D. No Right to Rely on Verbal Responses. Any inquiry that raises material issues and results in changes to the solicitation shall be answered solely through a written solicitation amendment. A submitter may not rely on verbal responses to its inquiries.

4. Submittal Acceptance Period

By submitting a proposal pursuant to this solicitation, the submitter agrees that it shall hold its submittal open for the number of days from the submittal due date that is stated in the solicitation. If the solicitation does not specifically state a number of days for the submittal acceptance, the number of days shall be one-hundred twenty (120).

5. Cost of Submittal Preparation

The City of Coolidge shall not reimburse any submitter the cost of responding to a solicitation.

6. Certifications, Disclosure, and Disqualification

- A. Non-collusion, Employment, and Services. By signing the Submittal form, or other official contract form, the submitter certifies that:
 - a. did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its submittal; and
 - b. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders.
- B. Disclosure. If the Contractor, business, or person submitting this submittal has previously been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Submitter must fully explain the circumstances relating to the preclusion or proposed preclusion in the submittal. If awarded, the submitter must include a letter with its submittal setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- C. Disqualification. The submittal of a submitter who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall be rejected.

7. Incorporation by Reference

The Uniform General Terms and Conditions are incorporated by reference into this solicitation and are available from the Project Manager.

8. Award of Contract

- A. Number or Types of Awards. Where applicable, the City of Coolidge reserves the right to make multiple awards or to award a contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the City of Coolidge. If the City Manager determines that an aggregate award to one submitter is not in the City of Coolidge's interest, "all or none" submittals shall be rejected.
- B. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in a submittal shall be deducted from the submittal for the purposes of evaluating that price.
- C. Contract Inception. A submittal does not constitute a contract nor does it confer any rights on the submitter to the award of a contract. A contract is not created until the submittal is accepted in writing by the Coolidge City Council and executed by the authorized signature of the City Manager and the Submitter.

9. Protests

Pursuant to Article 22-15 of the Coolidge City Code, all protests shall be in writing and be filed with the City Manager of the City of Coolidge. To be considered timely, a protest of a solicitation must be filed according to Section 22-15-4 of the Coolidge City Code after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, address, and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the solicitation or contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

10. Solicitation Order of Precedence

In the event of a conflict in the provisions of this solicitation, the following shall prevail in the order set forth below:

- A. Solicitation;
- B. Special Terms and Conditions, if any;
- C. Uniform General Terms and Conditions;
- D. Specifications;

- E. Exhibits;
- F. Special Instructions to Submitters; and
- G. Uniform Instructions to Submitters.

11. Persons with Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Contracts Manager. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified on the first page of this solicitation.

SUBMITTAL DEADLINE FOR STATEMENT OF QUALIFICATIONS

Submittals must be delivered in a sealed package bearing the title of the solicitation. Packages must be delivered prior to the submittal deadline to the Address listed below; any submittal package received after the deadline shall not be considered and will be discarded.

Submittals address and deadline information:

TITLE: CMAR FOR AQUATICS CENTER AND NORTHERN AVENUE RECONSTRUCTION

SUBMITTAL DUE DATE: THURSDAY, MARCH 26, 2020 TIME: 1:00 PM

**SUBMIT TO: Office of the City Clerk
City of Coolidge
130 W. Central Avenue
Coolidge, AZ 85128**

APPENDIX "A"

**EXHIBIT 1 – AQUATICS CENTER AND NORTHERN AVENUE ARIAL
(PROJECT AREA)**



APPENDIX "B"
SAMPLE CONTRACT FORMS

CONSTRUCTION MANAGER AT RISK
Pre-Construction Services for Aquatics Center and Northern Avenue
Reconstruction

This agreement is made and entered by and between City of Coolidge, a municipal corporation, hereinafter designated "CITY" and _____, hereinafter designated the "Construction Manager at Risk" or "CM@Risk."

RECITALS

WHEREAS, CITY intends to reconstruct the Aquatics Center and Northern Avenue generally located at _____; and

WHEREAS, the Project will be performed in two phases. Phase I will include the pre-construction phase services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the construction of the reconstruction of the Aquatics Center and Northern Avenue; and

WHEREAS, this is a CM@Risk contract for Phase I of the Project which required that the CM@Risk be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CM@Risk has represented to the CITY that CM@Risk has expertise and ability and is qualified to provide these pre-construction services and Construction Management Services and also to construct the Project and based on this representation the CITY engages CM@Risk to provide the services described herein; and

WHEREAS, to undertake the design of said Project the CM@Risk has entered into a contract with _____, for design services, hereinafter referred to as the "Project Designer."

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the CITY and CM@Risk, as follows:

ARTICLE 1- DEFINITIONS

"Contract Documents" mean all documents relating to the effectuation of this Agreement, including but not limited to all amendments, exhibits, terms and conditions, and the RSOQ.

"CM@Risk's Representative" means the person designated as such in Section 9.2B of this Agreement.

"Data Sheet" means the sheet listing Project information contained in the RSOQ.

"Guaranteed Maximum Price" or "GMP" means the sum of the maximum cost for the construction of this Project, including but not limited to, the CM@Risk's construction fee; the Project Designer fee; general conditions fee; taxes, bonds, insurance costs; and any contingency as proposed and approved pursuant to Subsection 3.2.8.

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

"Project" means all of the work and services to be performed pursuant to this contract and the construction of the reconstruction of the Aquatics Center and Northern Avenue all as more particularly described herein.

"Project Designer" means the designer hired by CM@Risk.

"Project Team" means the CM@Risk, representatives from the CITY, the Project Designer, and other consultants, as required.

ARTICLE 2 - PROJECT TEAM - CM@RISK KEY PERSONNEL

The CM@Risk will be an integral member of the Project Team, consisting of CM@Risk, representatives from the CITY, the Project Designer, and other consultants, as required.

2.1 Key Personnel.

Prior to the start of these contract services, the CM@Risk shall submit to the CITY for approval detailed résumés of key personnel, including any Sub consultants, that will be involved in performing services to be provided by CM@Risk.

2.2 Prior Approval for Change.

At any time hereafter that the CM@Risk desires to change key personnel while performing under this Agreement, the CM@Risk shall submit the qualifications of the new personnel to the CITY for prior approval.

2.3 Key Personnel Listed.

Key personnel shall include, but are not limited to, principal-in-charge, pre-construction manager, project manager (CM@Risk's Representative), superintendent and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, procurement planning and administration of the Work.

2.4 CM@Risk's Representative.

CM@Risk's Representative/project manager shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the contract services. CM@Risk's Representative shall communicate regularly with CITY and shall be vested with the authority to act on behalf of CM@Risk.

ARTICLE 3 – SCOPE OF WORK CM@RISK'S SERVICES AND RESPONSIBILITIES

Generally, it will be the responsibility of the CM@Risk to integrate the design and construction phases, utilizing its skills and knowledge of general contracting, to develop schedules; prepare detailed project construction estimates; study labor conditions; and, in any other way deemed necessary, to contribute to the development of the Project during the pre-construction/design phase.

3.1 Relationship of City and CM@Risk

- A. For the fee set forth in Article 6, the CM@Risk undertakes to act as the CITY'S fiduciary and to furnish professional pre-construction services during the design of the Project.
- B. The CM@Risk accepts a relationship of trust and confidence between itself and the CITY and undertakes to act as the CITY's fiduciary in all matters related to the Project. The CM@Risk agrees to furnish its best skills and best judgment to cooperate with the CITY and Project Designer during the design of the Project, and in all ways to further the interests of the CITY and the Project. The CM@Risk shall furnish value engineering, constructability, reviews and comments, estimates, and supporting comment to the Project Designer and CITY to provide a quality and complete Project, consistent with the available budget, all as more particularly described herein.
- C. Because of the CM@Risk's fiduciary duties to the CITY, the Project will be an "open book" job whereby the CITY may attend any and all meetings of the CM@Risk firm relating to the Project, and the CITY or its designated auditors or accountants shall have access to any and all records of the CM@Risk or maintained by the CM@Risk relating to the Project. Open book shall include the unit cost of labor and material provided by subcontractors and shall be provided to the CITY.

3.2 PRE-CONSTRUCTION SERVICES

The CM@Risk shall provide the following pre-construction services:

3.2.1 Project Design

- A. Following receipt of a "Notice to Proceed" with the design work, Project Designer shall complete the design and have all documents ready for construction or bidding within ___ calendar days of the date indicated on the Notice to Proceed.
- B. The Design Services for preparation of design and construction document period will be approximately ___ days.
- C. Project Designer shall complete all services specified herein in accordance with the Production Schedule and progress milestones included in Exhibit A and as discussed

with the CM@Risk for meeting schedule attached herein. In the event delays are experienced beyond the control of Project Designer, the completion date may be extended as mutually agreed upon by CITY and CM@Risk.

CM@Risk shall ensure that Project Designer is to be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. Project Designer shall ensure there are no conflicts among the Contract Documents including, but not limited to, any City guidelines relating to construction contracts, the plans and specifications prepared by Project Designer, any standard details or specifications incorporated therein by reference, and the Construction Contract. The Project Designer is responsible, along with his designers, for attesting to the design correctness and scaling the design documents.

3.2.2 Project Review

- A. CM@Risk shall meet with the CITY REPRESENTATIVE, as set forth in Section 9.1A, and other CITY team members, the Project Designer and other design team members to fully understand the Project, the design documents, the Project scope and all other pertinent aspects of the Project.
- B. The CM@Risk shall become an integral part of the Project Team that will coordinate the development and progress of the design and construction processes.
- C. CM@Risk shall visit the site of the Project, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Contract Documents.
- D. The CM@Risk shall develop written project procedures, in cooperation with the CITY REPRESENTATIVE that will be used as a guide for the management and coordination of this Project through the life of the Project.

3.2.3 Consultation During Project Development

The CM@Risk shall attend regularly scheduled meetings with the CITY REPRESENTATIVE, other CITY team members, Project Designer and consultants during the Design Phases established by the contract between the CM@Risk and the Project Designer, with input from the CITY, to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM@Risk shall provide written recommendations on construction feasibility.

3.2.4 Value Analysis

- A. The CM@Risk shall, after a complete review of the Project Program, evaluate the designs available at the time of the CM@Risk's commencement of Pre-Construction services, and obtain an understanding of the intent of the CITY and the Project

Designer, provide value analysis services and offer cost savings suggestions and best value recommendations to the CITY. All recommendations must be fully reviewed with the Project Designer and CITY, and approved by the CITY prior to implementation.

- B. Value analysis efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function.
- C. Value analysis efforts shall also take into consideration applicable constructability issues.
- D. The CM@Risk shall promptly notify the CITY and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.
- E. All value analysis studies must be provided on a timely basis within the design schedule.
- F. Value analysis studies shall be continuous as the design is being developed.
- G. The CM@Risk shall conduct value analysis throughout the Project and provide the CITY estimates as appropriate and shall conduct major value analysis at completion of the schematic design phase and at the design development phase (utilizing the Design Development documents), which analysis shall include, but not be limited to, the items noted below:
 - 1. Develop value analysis concepts for consideration at the session noted in #2 below (it is anticipated that the Project Designer will be concurrently conducting a similar activity).
 - 2. Brainstorming session(s) with Project Team.
 - 3. Written cost studies shall be produced and submitted to the CITY within two (2) weeks of the brainstorming session.
 - 4. Written pro/con evaluation of the cost studies shall be provided with the cost studies.
 - 5. Formal presentation of the written study to the Project Team shall be conducted by the CM@Risk firm.
 - 6. A final written value analysis study document including a summary of value analysis items, applicable cost adjustments, selected items and their corresponding cost adjustments shall be presented to the Project Team.

- H. In between the milestones for major value analysis studies, the CM@Risk shall periodically provide a tracking report which identifies the increases or decreases in costs due to value engineering or scope changes. It shall be the responsibility of the CM@R to keep the CITY and Project Designer informed as to the major trend changes in costs relative to the CITYs budget.

3.2.5 Schedule

- A. Within a reasonable time period from the Notice to Proceed on this Agreement, the CM@Risk shall establish a detailed CPM (Critical Path Method) schedule of the pre-construction/design phase of the Project. At some point deemed appropriate during the preconstruction/design phase, the CM@Risk shall establish a detailed CPM schedule of the construction phase of the Project. Both schedules shall be established with concurrence of the CITY and the Project Designer. The CM@Risk shall monitor this schedule during the preconstruction/design phase, insure that this schedule is updated, and advise the CITY of any deficiencies in adhering to this schedule by any party.
- B. The CM@Risk shall utilize standard software to prepare, provide, and maintain appropriately detailed design phase CPM schedules.
- C. Scheduling software shall allow for integration of all aspects of the design processes and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, and tabular reports.
- D. The Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. Updated schedules will be required at the end of each design phase and after major value engineering decisions.

3.2.6 Constructability Review

CM@Risk shall review the design throughout the pre-construction phase as to constructability, including without limitation, all issues identified in the CITY's RSOQ and CM@Risk's proposal, which are attached hereto as Exhibits A and B and incorporated herein by reference. With respect to each such issue, the CM@Risk shall submit a written report to both the CITY and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the CM@Risk's in-depth study/research; and (3) written recommendations for addressing the issue.

3.2.7 Construction Cost Model/Estimates

- A. The CM@Risk shall develop a project budget/cost model (independent from any similar cost estimate required of the Project Designer such as the Statement of

Probable Construction Costs) which shall be updated as needed but at a minimum at the end of each design phase (concepts, schematic, design development, and final construction documents) during which the CM@Risk is performing Pre-Construction Services ("CM@Risk Cost Model Update"). Due to variability in economic conditions, all cost models are to be construction based not data based; that is, the CM@Risk is to obtain pricing of trade work directly from the market place.

- B. Each CM@Risk Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the facility (including alternates, CM@Risk General Conditions, CM@Risk fees, and CM@Risk contingency) in accordance with the Project Designer's Program.
- C. The Amount Available for Construction is the sum set out on the Data Sheet and excludes designer fees and other reserves retained by the CITY.
- D. In the event that the CM@Risk's Statement of Probable Construction Costs exceed the Amount Available for Construction, the CITY may direct the CM@Risk to (and the CM@Risk shall without additional compensation to the CM@Risk) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the Project Program within the Amount Available for Construction.
- E. Each CM@Risk Cost Model Update and the Designer's Probable Construction Costs will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Amount Available for Construction. Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM@Risk Cost Model Update. The CM@Risk shall work with the CITY and the Project Designer to reach a mutually acceptable joint Probable Construction Cost.
- F. If requested by the CITY, the CM@R shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the CITY in the financing process.

3.2.8 Coordination of Contract Documents

- A. The CM@Risk shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The CM@Risk shall notify the Project Designer and the CITY in writing, as appropriate, upon observing any features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous.
- B. The CM@Risk shall review the final documents to see that all comments have been incorporated.
- C. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM@Risk during the review process shall be deemed

to be corrected, and any associated costs shall be included in the CM@Risk's Guaranteed Maximum Price (GMP).

3.2.9 Construction Guaranteed Maximum Price (GMP)

- A. Within ten (10) days after final review submission of the construction documents to CITY or at any sooner time requested by the CITY, the CM@Risk shall develop and provide to CITY a GMP proposal based on the design documents as completed at that time. Such GMP proposal will include all construction costs, project design costs and all other projected costs, including, without limitation, any CM@Risk contingency and General Conditions allowance but not including any CITY construction contingency. The GMP proposal shall include a schedule of values which shall specify all of the following: (a) unit or lump sum prices for work to be performed by CM@Risk (may be by CSI code, total costs, and cost per square feet of building); (b) each anticipated subcontract amount; (c) a separately identified CM@Risk's fixed fee as a fixed percentage of the GMP including home office overhead and profit; (d) General Conditions, and (e) all project related costs, i.e., taxes, bonds, personnel payroll benefits, etc. The final GMP shall state all qualifications and assumptions used to prepare the final GMP.
- B. The GMP must not exceed the Amount Available for Construction as set forth on the Data Sheet.
- C. In the event that the GMP exceeds the Amount Available for Construction, the CITY reserves the right to direct the CM@Risk to (and the CM@Risk shall) work in conjunction with the Project Designer to redesign the Project as necessary to maintain the Project Program and meet the Amount Available for Construction as follows:
 - 1. After consultation with the CITY, the CM@Risk shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost.
 - 2. The CM@Risk shall develop and provide to CITY a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.
 - 3. The CM@Risk shall analyze the Project Designer's originally submitted and as altered and redrafted Construction Documents, and make recommendations to the CITY as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Amount Available for Construction.
- D. Notwithstanding anything in the RSOQ to the contrary, the CM@Risk shall perform the work set forth in this Sub Section 3.2.8 without additional compensation.
- E. CITY has the right to reject any GMP as originally submitted, or as adjusted. In that

event, this Agreement will terminate according to its terms.

- F. The CM@Risk's detailed construction cost estimates and GMP will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Amount Available for Construction Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Amount Available for Construction and the CM@Risk's construction cost estimate and corresponding GMP. If indicated by the Amount Available for Construction limitations or other circumstances, the CM@Risk shall work with the CITY and Project Designer to reach a mutually acceptable GMP.
- G. Upon acceptance by the CITY of a GMP, the CITY shall prepare and the CM@Risk shall execute a construction contract reflecting the GMP and requiring CM@Risk to perform construction in accordance with the approved plans and specifications for that price. Within ten (10) days after the execution of the Construction Contract as provided herein, CM@Risk shall provide the CITY with a Performance Bond and a Labor and Material Payment Bond each for 100% of the GMP in conformity with state law.

3.2.10 Phased GMPs.

The CM@Risk may be requested to provide individual GMP proposals for specific construction phases of the 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.

3.2.11 Non-Acceptance of the GMP and Termination of CITY-CM@Risk Agreement

The CITY, at its sole discretion, may decline to accept the CM@Risk's GMP for the construction or for any construction phase and thereupon without penalty, this Agreement shall terminate according to its terms at the end of the Pre-Construction Phase of the Project.

ARTICLE 4—PHASED CONSTRUCTION LONG LEAD TIME PROCUREMENT

4.1 Recommendations for Phasing

If phased construction is appropriate and the CITY and Project Designer approve, the CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work. The CM@Risk 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.

4.2 Recommendation for long-lead time items.

The CM@Risk shall recommend to the CITY and the Project Designer a list and a schedule for the procurement by the CITY of long-lead time items which will be required to meet the Project Schedule.

4.3 Bid for Procurement

If the CITY determines that it is in its own best interest to have the CM@Risk procure such long-lead time items, the CITY may, at its sole discretion, direct the CM@Risk to solicit bids.

4.4 Purchase by CM@Risk

Upon prior approval by the CITY of the funding and of the terms and conditions of the purchase of said long-lead material, the CITY will authorize the CM@Risk to issue purchase orders for the material. If necessary, the Contract Price, as set forth in Article 6, will be adjusted.

4.5 City Procurement

If the CITY determines that it is in its own best interest to procure such long-lead time items, items may be procured by the CITY on terms and conditions acceptable to the CM@Risk. Upon the CITY's acceptance of the CM@Risk's GMP proposal, all contracts for such items shall be assigned by the CITY to the CM@Risk, who shall accept responsibility for such items as if procured by the CM@Risk.

4.6 Option not to Procure

If the CITY chooses not to procure long lead-time items prior to acceptance of a GMP, the Project Designer shall list the items and a delivery schedule in the Construction Documents and such required delivery schedules shall be taken into consideration in determining the contract time for the construction contract.

ARTICLE 5 – STANDARD OF CARE AND CORRECTIONS

5.1 CM@Risk Responsibility

The CM@Risk shall be solely responsible for the completeness and accuracy of reviews, reports, supporting data, and other pre-construction work prepared or compiled by CM@Risk or the Project Designer pursuant to this Agreement and shall correct such work, at the sole expense of CM@Risk. The fact that the CITY has accepted or approved the CM@Risk's work shall in no way relieve the CM@Risk of any such responsibilities.

5.2 Competent Staff

The CM@Risk will maintain an adequate and competent staff of qualified persons, as may be determined by the CITY, throughout the performance of this Agreement to ensure acceptable and timely completion of the scope of services. If the CITY objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk shall take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace with new personnel agreed to by the CITY.

ARTICLE 6-- CONTRACT PRICE

6.1 Fees

For services rendered by CM@Risk as described herein CITY shall pay CM@Risk a pre-construction services fee not to exceed the sum of _____ and 00/100 Dollars (\$_____) at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit C and made a part hereof by reference. Payment will be made monthly on the basis of progress reports. An Application and Certification for Payment Sheet must be submitted to CITY which shall be accompanied by a progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any deliverables submitted, and as to any sub-consultants, their actual requests for payment plus similar narrative and listings of their work.

6.2 Taxes

The Contract Price is deemed to include all transaction privilege, 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.

ARTICLE 7—CONTRACT TIME

7.1 Contract Time.

Following receipt of a "Notice to Proceed" with the Pre-construction Services, CM@Risk shall complete all Pre-construction Services and submit the final GMP to CITY within the timeframe specified in the schedule and as indicated on the Notice to Proceed.

7.2 Production Schedule.

CM@Risk shall complete all services specified herein in accordance with the CPM Progress Schedule and progress milestones included in such CPM Schedule. In the event delays are experienced beyond the control of CM@Risk, the completion date may be extended as mutually agreed upon by CITY and CM@Risk.

ARTICLE 8 -- CLAIMS AND DISPUTES

8.1 Dispute Avoidance and Resolution

- A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and CITY each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the work.
- B. CM@Risk and CITY shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and CITY's Representative.
- C. If a dispute or disagreement cannot be resolved through CM@Risk's Representative, and City's Representative, CM@Risk's Principal-in-charge and the City's Director of Public Works, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than five (5) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Principal-in Charge and the City's Director of Public Works, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

8.2 Duty to Continue Performance

CM@Risk shall continue to perform the work and CITY shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and CITY.

8.3 Disputed Invoices.

8.3.1 Disputed Items

CITY may temporarily delete any disputed items contained in CM@Risk's invoice, including items disputed due to lack of supporting documentation, and pay the remaining amount of the invoice. CITY shall promptly notify CM@Risk of the dispute and request clarification and/or remedial action. CITY may withhold payment on all disputed items until the issues are resolved. After any dispute has been settled, CM@Risk shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

8.3.2 Disputed Invoices

In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

8.4 Alternate Dispute Resolution:

In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by the CM@Risk and the CITY. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the CITY and the CM@Risk shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the CITY and CM@Risk. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

ARTICLE 9-- REPRESENTATIVES OF THE PARTIES

9.1 City Representatives

- A. CITY designates the individual listed below as the CITY's Representative, who shall be the single point of contract for CM@R, and who has the authority and responsibilities set forth herein including, but not limited to, the authority and responsibility for avoiding and resolving disputes pursuant to Article 8:

Ricky LaPaglia
Community Services Director
660 S. Main Street
Coolidge, AZ 85128
(520) 723-6013

9.2 CM@Risk Representatives

- A. CM@Risk designates the individual listed below as its Principal-in-charge ("CM@Risk's Principal-in-charge"), which individual has the authority and responsibility for avoiding and resolving disputes:

- B. CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibilities set forth herein:

ARTICLE 10- SUSPENSION AND TERMINATION

10.1 Termination for Convenience

- A. Upon receipt of thirty (30) days written notice to CM@Risk, CITY may, at its discretion and without cause, elect to terminate this Agreement. In such event, CITY shall pay CM@Risk only the direct value of its completed Contract Services and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and/or Sub consultants.
- B. CM@Risk shall be entitled to profit and overhead on completed work only, but shall not be entitled to anticipated profit or anticipated overhead.
- C. If CITY terminates this Agreement pursuant to this Subsection and proceeds with the Project through its employees, agents or third parties, CITY's rights to use the work product shall be as set forth in Section 14.16 hereof.

10.2. CITY's Right to Perform and Terminate for Cause

- A. If CM@Risk persistently fails to execute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or to perform material obligations under the Contract Documents, then CITY, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth herein.
- B. Upon the occurrence of an event set forth in Subsection 10.2 A above, CITY may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@Risk's receipt of such notice.
- C. If CM@Risk, within such seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then CITY may declare the Agreement terminated for default by providing written notice to CM@Risk of such declaration.
- D. Upon declaring the Agreement terminated pursuant to Paragraph C above, CITY may employ any person or persons to complete the work and provide all of the required services and other items.

- E. In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed prior to its default.
- F. If CITY's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to CITY. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by CITY in connection with the re-procurement and defense of claims arising from CM@Risk's default.
- G. If CITY improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Subsection 10.1.

ARTICLE 11 INDEMNIFICATION

11.1. All Liability

To the fullest extent permitted by law, CM@Risk shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with the performance of work under this Agreement by CM@Risk, or any of CM@Risk's employees, agents, subcontractors, or subconsultants, including the Project Designer and from all claims by CM@Risk's employees, subcontractors, subconsultants and agents for compensation for services rendered to CM@Risk in the performance of this Agreement including the Project Designer, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CM@Risk or CM@Risk's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

11.2 Consequential Damages:

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this Agreement in dollars as payable by the CITY or the amount of aggregate insurance required by this Agreement, whichever is greater.

ARTICLE 12 — INSURANCE

The CM@Risk or any subcontractor, if specified, shall maintain during the life of this Agreement, the following minimum public liability and property damage insurance which shall protect the CM@Risk from claims for injuries including accidental death, as well as from claims from property damages which may arise from the performance of work under this Agreement and the limit of liability for such insurance shall be as follows:

12.1 General Requirements:

- A. **Insurer Qualifications.** Without limiting any obligations or liabilities of the CM@Risk, the CM@Risk shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- B. **No Representation of Coverage Adequacy.** By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the CM@Risk. The City reserves the right to review any and all of the insurances policies and/or endorsements city in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the CM@Risk from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- C. **Additional Insured.** All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
- D. **Coverage Term.** All insured required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in the Agreement.
- E. **Primary Insurance.** The CM@Risk's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
- F. **Waiver.** All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work of services of the CM@Risk. The CM@Risk shall arrange to have such subrogation waivers incorporated into each policy via formal

written endorsement thereto.

- G. Policy Deductibles and/or Self-Insured Retentions.** The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The CM@Risk shall be solely responsible for any such deductible or self-insured retention amount.
- H. Use of Subcontractors.** If any work under this Agreement is subcontracted in any way, the CM@Risk shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by the City in City's sole discretion) set forth herein protecting the City and the CM@Risk. The CM@Risk shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.
- I. Evidence of Insurance.** Prior to commencing any work or services under this Agreement, the CM@Risk shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by CM@Risk's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the CM@Risk's responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:
- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insured as follows:
 - a. Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
 - b. Auto Liability – Under ISO Form CA 2048 or equivalent.
 - c. Excess Liability – Follow Form to underlying insurance.
 - (2) The Consultant's insurance shall be primary insurance as respects performance of the Agreement.
 - (3) All policies, including Worker's Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Consultant under this Agreement.
 - (4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or

representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

12.2 Required Coverage

Such insurance shall protect CM@Risk from claims set forth below which may arise out of or result from the operations of CM@Risk under this Agreement and for which CM@Risk may be legally liable, whether such operations be by the CM@Risk or by a Sub-consultant or sub© or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A. **Commercial General Liability.** The CM@Risk shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 92 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- B. **Vehicle Liability.** The CM@Risk shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the CM@Risk’s owned, hired and non-owned vehicles assigned to or used in the performance of the CM@Risk’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader to coverage scope than underlying insurance.

C. **Professional Liability (Errors and Omissions Liability).** CM@Risk shall maintain, or cause Project Designer to maintain, Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the CM@Risk, or anyone employed by the CM@Risk, or anyone for whose negligent acts, mistakes, errors and omissions the CM@Risk is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a “claims made” basis, CM@Risk warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

D. **Workers’ Compensation Insurance.** CM@Risk shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CM@Risk’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,00 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

12.3 Cancellation and Expiration Notice

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

ARTICLE 13 — NOTICE

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) three (3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid to the address indicated below or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

To CITY of Coolidge:

Ricky LaPaglia
City of Coolidge
Community Services Director
660 S. Main Street
Coolidge, AZ 85128
(520) 723-6013

To CM@Risk:

To Project Designer:

ARTICLE 14 — GENERAL PROVISIONS

14.1 Interpretation and Intent

- A. The Contract Documents are intended to permit the parties to complete the Contract Services and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- B. The CITY's General Conditions are incorporated herein by reference to the extent they are applicable to this Agreement and to the extent the terms and conditions therein do not conflict with the terms and conditions of this Agreement.
- C. The Contract Documents and any attachments represent the entire agreement between CITY and CM@Risk and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

14.2 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by CM@Risk and approved by the City Council. Any change in the scope of work, either additions or deletions shall not be effective and there shall be no additional payment therefore except approved in writing and signed by a duly authorized representative of each party.

14.3 Time is of the Essence. CITY and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

14.4 Mutual Obligations. CITY and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

14.5 Cooperation and Further Documentation. The CM@Risk agrees to provide the

CITY such other duly executed documents as shall be reasonably requested by the CITY to implement the intent of the Contract Documents.

14.6 Assignment. Neither CM@Risk nor CITY shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

14.7 Successor. CM@Risk and CITY intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

14.8 Conflict In Language. All services performed shall conform to all applicable CITY codes, ordinances and requirements as outlined in the Contract Documents.

14.9 Third Party Beneficiary. Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the CITY and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of CITY and the CM@Risk and not for the benefit of any other party.

14.10 Governing Law. The Agreement and all Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

14.11 Independent Contractor. The CM@Risk is and shall at all times during performance of services retain CM@Risk's status as an independent contractor. Any provisions in the Contract Documents that may appear to give the CITY the right to direct the CM@Risk as to the details of accomplishing the work or to exercise a measure of control over the work means that the CM@Risk shall follow the wishes of the CITY as to the results of the work only. These results shall comply with all applicable laws and ordinances. CM@Risk's employees shall under no circumstances be considered or held to be employees or agents of CITY, and CITY shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or CM@Risk.

14.12 Survival. All warranties, representations and indemnifications by the CM@Risk shall survive the completion or termination of the Contract Documents.

14.13 Covenant against Contingent Fees. The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the CITY Council, or any employee of the CITY has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

14.14 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

14.15 Headings. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

14.16 Work Product.

- A. All work products (electronically or manually generated) including but not limited to: project design, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the CITY and are to be delivered to the CITY before the final payment is made to the CM@Risk. In the event these documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk shall not unreasonably withhold, the CITY agrees to hold the CM@Risk harmless to the extent permitted by law from the legal liability arising out of the CITY's alteration, modification, or adaptation of the documents.
- B. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its sub consultants or personnel, during the course of performing the Contract Documents or arising out of the Project shall belong to the CM@Risk.
- C. With this Agreement, the CM@Risk and its subconsultants hereby grant a license to the CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or deliverables developed or created as a result of the Project and this Agreement. This license also includes the making of derivative works. In the event that the derivative works require the CITY to alter or modify the documents, then the provisions of subsection apply.

14.17 Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

14.18 Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The CM@Risk shall comply with Executive Order 99-4, Part 1.A. which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The CM@Risk shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

14.19 Federal Regulations. Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. CM@Risk acknowledges, by signature to this Agreement, that: CM@Risk is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; CM@Risk's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

14.20 Undocumented Workers. CM@Risk understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, CM@Risk hereby warrants to the City that the CM@Risk and each of its subcontractors ("Subcontractor") 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 "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the CM@Risk to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any CM@Risk or Subcontractor employee who works on this Agreement to ensure that the CM@Risk or Subcontractor is complying with the Immigration Warranty. CM@Risk agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the CM@Risk and any of subcontractors to ensure compliance with Immigration Warranty. CM@Risk agrees to assist the City in regard to any random verifications performed.

Neither the CM@Risk nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish 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 paragraph must be included in any contract the CM@Risk enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Notwithstanding the provisions set forth above, a common carrier shall not be considered a subcontractor for purposes of this Agreement.

14.21 No Kick-Back Certification. CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Consultant's firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Consultant hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

14.22 Israel Boycott. CM@Risk shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01.

14.23 License. CM@Risk represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Consultant understands that the activity described herein may constitute "doing business in the "City of Coolidge" and Consultant agrees to obtain any necessary business tax license pursuant to the City of Coolidge's City Code and keep such license current during the term of this Agreement. Any activity by subcontractors or Project Designer within the corporate city limits, will invoke the same business tax regulations on any subcontractors, and CM@Risk ensures its subcontractors will obtain any required business tax license.

ARTICLE 15--DATA CONFIDENTIALITY

15.1 Data

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

15.2 Confidentiality

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

15.3 Written Consent Required

The CM@Risk shall not divulge data to any third party without prior written consent of the CITY. The CM@Risk shall not use the data for any purposes except to perform the services required under the Contract Documents but may use and disclose such data as necessary to accomplish the services to be provided herein. These prohibitions shall not apply to the following data provided the CM@Risk has first given the required notice to the CITY:

- A. Data which was known to the CM@Risk prior to its performance under the Contract Document unless such data was acquired in connection with work performed for the CITY;
- B. Data which was acquired by the CM@Risk in its performance under this Agreement and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
- C. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the CM@Risk is subject.

15.4 Notice to CITY

In the event the CM@Risk is required or requested to disclose data to a third party including, but not limited to a media source, or any other information to which the CM@Risk became privy as a result of any other contract with the CITY, the CM@Risk shall first notify the CITY as set forth in this section of the request or demand for the data. The CM@Risk shall give the CITY sufficient facts so that the CITY can be given an opportunity to first give its consent or take such action that the CITY may deem appropriate to protect such data or other information from disclosure.

15.5 Copies to CITY

Unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the CITY, the CM@Risk shall promptly deliver, as set forth in this section, a copy of all data to the CITY. All data shall continue to be subject to the confidentiality agreements of the Contract Documents.

15.6 Duty of CM@Risk

The CM@Risk assumes all liability for complying with this Section 15 regarding the confidentiality of the data in its possession and agrees to compensate the CITY if any of the provisions of this section are violated by the CM@Risk, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive

relief in court.

ARTICLE 16--CONFLICT OF INTEREST

CM@Risk stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. §38-511, the City may cancel this contract within three (3) years after its execution without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the CITY is, at any time while the contract is in effect, an employee of the other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

16.1 Notice to CITY

To evaluate and avoid potential conflicts of interest, the CM@Risk shall provide written notice to the CITY, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the CITY. Such notice shall be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven (7) business days prior to an adverse action as defined below.

16.2 Adverse Actions

Actions that are considered to be adverse to the CITY under the Contract Documents include but are not limited to:

- A. Using data as defined in the Agreement acquired in connection with the Contract Documents to assist a third party in pursuing administrative or judicial action against the CITY;
- B. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and
- C. Using data to produce income for the CM@Risk or its employees independently of performing the services under the Contract Documents, without the prior written consent of the CITY.

16.3 No Conflict

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

16.4 Failure

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives on this ____ day of _____, 2020.

CITY OF COOLIDGE _____

By: _____

Jon Thompson, Mayor

By: _____

Its: _____

ATTEST:

Norma Ortiz, City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney

EXHIBIT A
CITY'S RSOQ

EXHIBIT B
CM@RISK'S PROPOSAL

EXHIBIT C
FEE SCHEDULE

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION CONTRACT**

**PROJECT TITLE: AQUATICS CENTER / NORTHERN AVENUE
RECONSTRUCTION**

This CONTRACT is made this ____ day of _____, 2020, by and between the City of Coolidge, an Arizona municipal corporation, (hereinafter referred to as "CITY,") and _____, (hereinafter referred to as "CM@RISK.")

CITY and CM@RISK, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. ARTICLE ONE – CITY’S STANDARD CONSTRUCTION GENERAL CONDITIONS

The City’s General Conditions for Construction Contracts are incorporated herein by reference and the parties agree to be bound by all provisions therein. If any of the provisions of the contract conflict with the City’s General Conditions for Construction Contracts, the parties are bound by the General Conditions. For the purposes of this Agreement, references to CONTRACTOR and to CM@RISK in said General Conditions refer to CM@RISK herein.

2. ARTICLE TWO – DEFINITIONS

Words used in this Agreement which are defined in CITY’s General Conditions for Construction Contracts shall have the meaning stated therein. CM@RISK is the CONTRACTOR as defined in said General Conditions.

2.1. “Construction Allowance Items” means those items included in the GMP as allowances, which items shall be paid based on the actual cost to CM@RISK as described in the City’s General Conditions for Construction Projects, Subsection 12.4., provided, however, no overhead or profit shall be included in the item as these are paid separately. The actual amounts paid for Allowance items shall be included in the Contract Price Subtotal by which the percentage for the Contractor’s fee for overhead and profit is multiplied.

2.2. “Guaranteed Maximum Price” (GMP) means the maximum amount to be paid by the City to CM@RISK for the performance of the Work which shall constitute payment in full for the furnishing of all materials, equipment, appurtenances, labor, plant and tools

necessary to provide a complete workmanlike, finished and satisfactory Project as described herein.

3. ARTICLE THREE – CM@RISK – FIDUCIARY DUTY

3.1. This is a contract for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CM@RISK has participated in the design process and been an active member of the Project Design Team and is fully aware of any issues and constraints involved in this construction project.

3.2. CM@RISK is the CITY's fiduciary responsible for undertaking all necessary action contemplated under the contract documents to construct the Project and ensure timely and quality completion of the project at a cost within the Guaranteed Maximum Price (GMP).

3.3. This project is an "open book" project. CITY is entitled to attend any and all meetings, and CITY shall have access to any and all records of CM@RISK or maintained by CM@RISK relating to the Project.

4. ARTICLE FOUR – WORK

4.1. CM@RISK shall perform all Work necessary to complete the Project described herein and in Exhibits _____, which are attached hereto and incorporated herein by reference. The Project is known as and is hereinafter referred to as, AQUATICS CENTER / NORTHERN AVENUE RECONSTRUCTION as described in the Contract Documents and including the furnishing of all materials, equipment, appurtenances, labor, plant and tools necessary to provide a complete workmanlike, finished and satisfactory Project as described herein. Each item shall be completed with all necessary connections, testing, painting and related work accomplished to provide for the satisfactory use and/or operation of the item.

4.2. CM@RISK shall complete, provide and perform, or cause to be performed, all Work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

5. ARTICLE FIVE – CITY'S REPRESENTATIVE

5.1. CITY has appointed a CITY'S REPRESENTATIVE (sometimes referred to as CITY REP and sometimes known as the Owner's Representative or Construction Manager) to manage this Project and to represent the CITY on the Project site. The CITY REP will assume all duties and responsibilities and will have all rights and authority assigned to the CITY REP in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. Any references in the Contract Documents, or other pertinent documents, to the Engineer or Project Engineer shall mean the CITY REP.

5.2. The CITY'S Representative is Ricky LaPaglia, Community Services Director, 660 S. Main Street, Avenue, Coolidge, AZ 85128, (520) 723-6013.

6. ARTICLE SIX - CONTRACT TIME

6.1. Completion time. The Work shall be substantially complete within _____ Calendar days after the date when the Contract Time commences to run as provided in the Contract Documents, and all Work shall be finally completed and ready for final payment in accordance with the Contract Documents within _____ Calendar days after the date when the Contract Time commences to run.

6.2. CPM Schedule. The Construction Progress Schedule in Critical Path Method (CPM) format indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents, is attached hereto and incorporated herein as Exhibit _____. Revisions/updates to the CPM schedule shall be submitted as often as necessary to accurately reflect plans for completion of the Work, but no less frequently than required in the Contract Documents.

6.3. Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payment as stated in the Contract Documents, are of the essence of the Contract.

6.4. No Waiver. Failure of CITY to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CM@RISK'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

6.5. Specific Waiver. CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CM@RISK to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling CITY to all the remedies set forth herein or provided by law.

6.6. Material Breach. Failure of CM@RISK to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Agreement entitling CITY to terminate the Agreement unless CM@RISK applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

6.7. Written Extensions. Failure of CITY to insist upon the performance of any covenant or condition within the time periods specified herein, or CITY's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of CM@RISK's duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition. Failure of CM@RISK to complete performance promptly within the additional time

authorized in the waiver or extension of time agreement shall constitute a material breach of this Agreement entitling CITY to all the remedies set forth herein or provided by law.

7. ARTICLE SEVEN - LIQUIDATED AND SPECIAL DAMAGES

7.1. Liquidated Damages:

7.1.1. It is hereby agreed that the amounts per day set forth herein in paragraphs 7.1.2. are reasonable estimates of such damages, that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by CITY, and CM@RISK agrees to pay such liquidated damages as herein provided.

7.1.2. CITY and CM@RISK recognize that time is of the essence of this Contract and that CITY will suffer financial loss, in addition to and apart from the costs described in Paragraph 7.2, if the Work and/or portions of the Work are not performed and completed within the times specified in Article Six, plus any extensions thereof allowed in accordance with the Contract Documents. CITY and CM@RISK also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and CM@RISK agree that as liquidated damages for delay (but not as a penalty) CM@RISK shall pay CITY _____ and 00/100 Dollars (\$_____.00) for each calendar day that expires after the time specified in Article Six for substantial completion, until the Work is substantially complete. After Substantial Completion, if CM@RISK shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by CITY, CM@RISK shall pay CITY _____ and 00/100 Dollars (\$_____.00) for each calendar day that expires after the time specified in Article Six for final completion and readiness for final payment.

7.2. Special Damages: In addition to the amounts provided for liquidated damages, CM@RISK shall pay CITY the actual costs reasonably incurred by CITY for the CITY REP, the Project Designer and for engineering and inspection forces employed on the Work for each day that expires after the time specified in Article Six for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this Contract is _____ and 00/100 Dollars (\$_____.00) per hour. The rate for work by the Project Designer for this Contract is _____ dollars (\$_____.00) per hour. The rate for work by the CITY REP is One Hundred Ninety and 00/100 Dollars (\$_____) per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours

7.3. CITY may withhold and deduct from any payment due to CM@RISK the amount of liquidated damages, special damages, and other costs, such as CM@RISK'S failed

testing costs or damages to other CITY property, from any moneys due CM@RISK under the Contract.

8. ARTICLE EIGHT - CONTRACT PRICE

8.1. Guaranteed Maximum Price. The Guaranteed Maximum Price (GMP) is the total amount payable by the City to Contractor for the complete construction of the Project. CM@RISK represents, warrants and guarantees to CITY that the total maximum cost to be paid by CITY for CM@RISK's complete performance of this Contract, including, without limitation, Final Completion of all Work, all services of CM@RISK under this Contract, and all fees, compensation and reimbursements to CM@RISK, shall not exceed the total amount of _____ and 00/100 Dollars (\$_____) ("Guaranteed Maximum Price"), as set forth in Exhibit ____, attached hereto and incorporated herein by reference. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CM@RISK without reimbursement by CITY.

8.2. Guaranteed Maximum Price Components. The Guaranteed Maximum Price is comprised of the maximum amount payable by CITY for:

8.2.1. The Cost of the Work for full and complete performance of the Work to complete the Project as described herein. The items to be included in Cost of Work are those listed in Section 12.4 of the City's General Conditions for Construction Projects, except that no overhead and profit shall be included in the cost of work and shall be subtracted out of items listed in 12.4(A)(5)(c), and the items listed in 12.4(A)(5)(d) and (h) are not included in the cost of the work. The Cost of the Work will be referred to as the Work Item Direct Costs. No additional payments will be made for any Work included in and/or necessary for completion of the Project unless specifically noted and excluded from the GMP in the assumptions and clarifications of the GMP. Progress payments will be made based on the schedule of values, however, City reserves the right to audit the books of CM@RISK, at any time, to determine actual costs and to modify the schedule of values to better reflect actual costs of the Work.

8.2.2. A fee to CM@RISK for Overhead and Profit which has been estimated for inclusion in the GMP to be the amount of _____ and 00/100 Dollars (\$_____.00) ("CM@RISK's Fee"). This fee shall be determined by multiplying the agreed upon percentages listed in the GMP by the Work Item Direct Costs less the amounts listed for Contractor's General Conditions. This CM@RISK's Fee shall be the CM@RISK's sole and exclusive compensation for all costs not included in Subsections 8.2.1 or 8.2.3 herein and for those costs and expenses listed in Subsection 12.4(B) and 12.5 of the City's General Conditions for

Construction Projects, and is inclusive of all overhead and profit arising out of or relating to the CM@RISK's Work.

8.2.3. Reimbursement to CM@RISK by CITY for the cost of insurance, bonds and taxes actually incurred by CM@RISK for this Project.

8.2.4. The Guaranteed Maximum Price is further broken down into line items and categories on Exhibit __ attached hereto.

8.3. Quantities. The quantities set forth in the GMP are used only for the purpose of substantiating and demonstrating the basis for the GMP submitted by CM@RISK and are not a part of this Contract nor any guarantee by CITY. CM@RISK shall install and perform such quantities as necessary to complete the Project in accordance with the Project plans and the Contractor agrees to perform all of the Work for costs plus fees and reimbursements described herein, not to exceed the Guaranteed Maximum Price, regardless of whether or not the items or units are decreased or increased.

8.4. Cost Overruns. CM@RISK shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from CITY. CM@RISK is not entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in this Article 8.

8.5. Inferable Work (intent of the Project). CM@RISK agrees that the scope of the Guaranteed Maximum Price includes Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Project description and/or Contract Documents, or consistent therewith, and such Work shall be performed by CM@RISK without any increase in the Guaranteed Maximum Price.

8.6. Allowances. The GMP includes some work items with the cost listed as an allowance. Allowances are to be used specifically for the areas of work defined in the Contract Documents; provided however,

8.6.1. If the designated work is completed for less than the allowance, the surplus will revert to the project construction contingency.

8.6.2. If the designated work requires more than the allowance, the additional funds will be allocated by the CITY with assistance from CM@RISK within the GMP by transferring excess from other allowance items, value engineering or using less expensive means, methods or components or as a last resort reducing the scope of the Project.

8.6.3. A running balance sheet will be kept concerning the various allowances so that monies can be floated among the allowances to maintain the integrity of the overall

GMP. Thus, savings in one area of work will be available to offset overruns in another area of work specifically associated with these allowances.

8.7. Construction Contingency. This GMP includes a dollar amount listed as a Construction Contingency which shall be readily available for increased costs for subcontractors, material and equipment subject to prior approval of City, which approval will not be withheld unreasonably. The Construction Contingency may also be used, at the discretion of CITY, to reimburse CM@RISK for unexpected costs due to (a) scope gaps between trade subcontractors; (b) contract default by trade subcontractors; (c) unforeseen field conditions but only as defined in Subsection 4.3 of the City's General Conditions for Construction Projects; (d) work completed to meet the intent of the design, but which was not indicated on the plans; (e) costs overruns not covered by allowances; (f) costs of corrective work not provided for elsewhere and (g) implementation of any Recovery Plan. Cost for which CM@RISK desires to be paid from the Construction Contingency shall be documented by CM@RISK on a time and materials basis and are subject to verification by the CITY. If agreed to by CITY, a "Use of Contingency" form shall be executed by both parties authorizing the actual cost of the work to be paid and included in the Work Item Direct Costs. The Construction Contingency is not allocated to any particular item of the Project but may be used for any portion of the work as determined above. The Construction Contingency Use Authorizations shall be marked-up to include Tax, Bond, Insurance and Fees, as these amounts were carried below the mark-ups of the original GMP Summary Calculation Sheet included herein as Exhibit _____. Any amount not used in the Construction Contingency shall belong to the CITY and shall reduce the GMP.

8.8. Reduction of the Work. If CITY elects to have a party other than CM@RISK, or one of CM@RISK's Subcontractors, perform the Work related to an Allowance Item or other portion of the Work, or otherwise eliminates or reduces the scope of an Allowance Item or other portion of the Work, the Guaranteed Maximum Price shall be reduced by the Allowance Amount for any such Allowance Item or the budgeted amount in the Guaranteed Maximum Price for such item, and such amount shall be excluded from the Work Item Direct Costs upon which the CM@RISK's Fee is calculated.

8.9. Taxes. CM@RISK shall pay all existing and future applicable Federal, State and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with the performance of the Work. In the event CM@RISK is obligated to pay any new or increased taxes or duties arising after the date hereof, the amount of such new or increased taxes shall increase the Guaranteed Maximum Price pursuant to the Change Order provisions of this Agreement and as set forth in the General Conditions. In the event CM@RISK receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction

shall decrease the Guaranteed Maximum Price pursuant to the Change Order provisions of this Agreement and as set forth in the General Conditions.

9. ARTICLE NINE - PAYMENT PROCEDURES

9.1. Schedule of Values. Before the first application for Payment, CM@RISK shall submit to CITY, and the parties shall agree upon, a Schedule of Values, setting forth the various portions of the Work, and the costs listed in the Guaranteed Maximum Price allocated to each such portion of the Work. The Schedule shall be used as a basis for reviewing the contractor's applications for payment and as a basis for progress payments. The Schedule of Values shall be updated as actual costs become known to accurately reflect the cost of the Work. City reserves the right to audit the books of CM@RISK, at any time, to determine actual costs and to modify the schedule of values to better reflect actual costs of the Work. At Project completion and prior to final payment the parties will reconcile the Schedule of Values with the actual costs in accordance with provisions in Article Eight herein to determine the final payment.

9.2. Applications for Payment. CM@RISK shall submit completed Applications for Payment in accordance with the Contract Documents. No payment application will be considered complete unless it is accompanied by an updated Construction Progress Schedule and a certification that the on-site, red lined, as-built drawings are up to date. Completed Applications for Payment will be processed by CITY REP as provided in the Contract Documents.

9.3. Waiver of Claims at Final Payment. Acceptance of Final Payment by CM@RISK shall constitute a waiver of affirmative claims by CM@RISK except those previously made in writing and identified as unsettled at the time of Final Payment.

9.4. Retention. Prior to Substantial Completion, progress payments will be made in the amount equal to the percentages indicated below, but in each case less the aggregate of payments previously made and less such amounts as CITY'S REPRESENTATIVE may determine, in accordance with the General Conditions or other provisions of the Contract Documents.

9.4.1. To insure the proper performance of the contract CITY shall retain ten per cent (10%) of the amount of each approved progress payment until the Work is fifty percent (50%) complete.

9.4.2. When the Work is fifty percent (50%) complete as measured by the Schedule of Values and approved by CITY REP, one-half of the amount retained under the ten percent (10%) retention provision, shall be paid to CM@RISK, provided CM@RISK is on schedule for project completion and is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After fifty percent (50%) completion, CITY shall retain five percent (5%) of each approved progress payment providing CM@RISK is on schedule for project completion, is making satisfactory progress on the Work, except that if at any time CITY determines satisfactory progress is not being made,

ten percent (10%) retention shall be reinstated for all progress payments made under the contract subsequent to such determination

9.4.3. In lieu of retention, CITY will, at the option of CM@RISK, accept security as provided in ARS § 34-221.

9.5. CITY may withhold and deduct from each progress payment and final payment an amount equal to CITY'S estimate of the liquidated damages then due, or that would become due based on CITY'S estimate of late completion of the Work, provided CM@RISK fails to submit and implement a written schedule recovery plan describing the cause of schedule slippage or delayed progress and the actions proposed and taken to recover schedule slippage.

9.6. Final Payment: Upon final completion and acceptance of the Work and upon compliance with all other terms and conditions of the Contract Documents, CITY shall pay the remainder of the Contract Price, including retainage withheld, less such deductions as may be withheld to cover claims in accordance with state law and the Contract Documents, and to cover liquidated and special damages and other charges owing to CITY.

10. ARTICLE TEN – CHANGES TO CONTRACT GMP

10.1. Changes to Scope. CITY reserves the right to change the scope of the Project by adding or deducting work to be performed by CM@RISK under this Contract. Increases to the scope of work to be paid for out of the Owner's Contingency shall be documented by a Work Change Directive. Deductions from the work and additions after the Owner's Contingency has been exhausted shall be documented by a Change Order executed by both parties.

11. ARTICLE ELEVEN - CM@RISK'S REPRESENTATIONS

As part of the inducement for CITY to enter into this Contract, CM@RISK makes the following representations:

11.1. CM@RISK was a member of the Design Team for this Project and participated in and provided recommendations concerning the Contract Documents and Project Design.

11.2. CM@RISK has examined and carefully studied the Contract Documents (including any Addenda) and other related data identified in the Bidding Documents, including "technical data" and all federal, state and local laws, ordinances, standards, rules and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

11.3. CM@RISK has obtained and carefully studied (or assumes responsibility for having done so) the reports of investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) and the drawings of physical conditions in or relating to existing surface or subsurface structures, at or contiguous to

the site or otherwise which may affect cost, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CM@RISK and safety precautions and programs incident thereto. CM@RISK acknowledges that CITY and CITY'S REP do not assume responsibility for the accuracy or completeness of information and data shown or indicated therein with respect to Underground Facilities at or contiguous to the site. CM@RISK acknowledges full responsibility for locating and resolving any conflicts with any Underground Facilities.

11.4. CM@RISK has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

11.5. CM@RISK has made or caused to be made examinations, investigations, tests, studies and related data as he deems necessary, and CM@RISK does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

11.6. CM@RISK has correlated the information known to CM@RISK, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, reports, and data, with the terms and conditions of the Contract Documents.

11.7. CM@RISK has given CITY REP written notice of all conflicts, errors, or discrepancies that CM@RISK has discovered in the Contract Documents, and the written resolution thereof by CITY is acceptable to CM@RISK, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CM@RISK assumes full responsibility and liability for any conflicts, errors or discrepancies in the Contract Documents, including, but not limited to, the specifications, design and engineering for the project, for which written notice has not been provided and which a reasonable Contractor, participating in the Design Process as the Construction Manager at Risk would have discovered.

12. ARTICLE TWELVE – CONTRACT DOCUMENTS, DRAWINGS AND ADDENDA

The Contract Documents which comprise the entire agreement between CITY and CM@RISK concerning the Work consist of those listed below. There are no Contract

Documents other than the following:

12.1. This Contract

12.2. The Special Provisions and Specifications entitled: Aquatics Center/ Northern Avenue, as listed in Exhibit _____

12.3. The Drawings entitled: Aquatics Center / Northern Avenue, as listed in Exhibit _____

12.4. Performance Bond and Payment Bond.

12.5. The approved Baseline Project Schedule (CPM) as shown in Exhibit _____.

12.6. General Conditions (pages __ to ____, inclusive).

12.7. Notice to Proceed.

12.8. Approved Construction GMP and attached Inclusions, Exclusions, Assumptions and Clarifications listed in Exhibit _____ and Exhibit _____.

12.9. CM@RISK'S Subcontractor and Supplier Selection Documentation and Cost Reports (Exhibits __ and __).

12.10. The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

- A. Written Amendments;
- B. Work Change Directives;
- C. Change Order(s).

13. ARTICLE THIRTEEN – BONDS

CM@RISK shall furnish Payment and Performance bonds, each in an amount at least equal to the Contract Price, as security of the faithful performance and payment of all CM@RISK'S obligations under the contract documents. The Payment and Performance bonds are attached hereto as Exhibit __ and Exhibit ____ and incorporated herein by reference.

14. ARTICLE FOURTEEN – INSURANCE

14.1. General Requirements:

- A. CM@RISK, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best,

Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

- B. With the exception of professional liability policies, policies written on a “Claims made” basis are not acceptable without written permission from the City’s Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CM@RISK may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CM@RISK.
- E. All insurance policies, except Workers’ Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Coolidge, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CM@RISK’s insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CM@RISK's acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CM@RISK. CM@RISK shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CM@RISK to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-

insured retentions (SIR) in excess of \$25,000 will not be accepted except with permission of the Financial Services Director/designee.

- I. All policies shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CM@RISK with reasonable promptness in accordance with the CM@RISK's information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CM@RISK until such time as the CM@RISK shall furnish such additional security covering such claims as may be determined by the CITY.

14.2. Proof of Insurance - Certificates of Insurance

- A. Prior to commencing Work or services under this Agreement, CM@RISK shall furnish to CITY Certificates of Insurance, issued by CM@RISK's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Coolidge five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CM@RISK, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CM@RISK of any deficiencies in such policies and endorsements, and such receipt shall not relieve

CM@RISK from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of CM@RISK's obligations under this Agreement.

14.3. Required Coverage

Such insurance shall protect CM@RISK from claims set forth below which may arise out of or result from the operations of CM@RISK under this Contract and for which CM@RISK may be legally liable, whether such operations be by the CM@RISK or by a Sub-consultant or subCM@RISK or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CM@RISK's employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CM@RISK's employees;
- D. Claims for damages insured by usual personal injury liability coverage;
- E. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof.
- G. Claims for bodily injury or property damage arising out of completed operations;
- H. Claims involving contractual liability insurance applicable to the CM@RISK's obligations under the Indemnification Agreement contained in Section 15 herein;
- I. Claims for injury or damages in connection with one's professional services;
- J. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material,

as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included;

14.3.1. Commercial General Liability - Minimum Coverage Limits:

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CM@RISK's operations and products, and completed operations.

14.3.2. Automobile Liability - Minimum Coverage Limits

Automobile Liability: CM@RISK shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CM@RISK's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

14.3.3. Worker's Compensation and Employer's Liability:

CM@RISK shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CM@RISK's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, CM@RISK will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CM@RISK.

14.3.4. Builders' Risk (Property) Insurance:

CM@RISK shall purchase and maintain in force on a replacement cost basis, Builders' Risk insurance in the amount of the initial Contract Amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made or until no person or entity other than

the City of Coolidge has an insurable interest in the property required to be covered, whichever is earlier. The insurance shall, at a minimum, cover the perils insured under the Insurance Services Office, Inc. (ISO) special causes of loss form CP1030, and shall be endorsed as needed to provide full coverage for loss or damage from collapse, including collapse resulting from design error. CM@RISK shall provide and maintain Builder's Risk insurance covering construction activities including but not limited to fire, extended coverage, vandalism and malicious mischief, theft, collapse, flood, with the coverage limit of not less than the contract value, less site preparation.

14.3.5. Construction Insurance:

CM@RISK shall provide and maintain construction insurance coverage listed below until the project is accepted by the City of Coolidge which shall be written for 100% of the completed value covering the City of Coolidge as the insured.

- A. For construction of new buildings: "Builders Risk Form" - all risk forms with an extension of buildings coverage to include personal property of others in the care, custody and control of the insured.
- B. For additions or repairs of existing buildings or structures: "Builders Risk Completed Value Form", covering CM@RISKs' interest in improvements, repairs, additions, alteration to completed buildings, and subject the coverages described in item A above.
- C. For construction of bridges, viaducts or similar structures: "Bridge Builders Risk Form", All Risk Contract.

15. ARTICLE FIFTEEN – INDEMNIFICATION

To the fullest extent permitted by law, CM@RISK shall defend, indemnify and hold harmless the City of Coolidge, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoM) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, work or services of CM@RISK, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose acts, errors, mistakes or omissions CM@RISK may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of CM@RISK, its agents, employees or representatives to fulfill CM@RISK'S obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or

alleged to have resulted from the errors, mistakes or omissions of CoM, (other than CM@RISK, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

16. ARTICLE SIXTEEN - MISCELLANEOUS

16.1. Terms used in this Contract which are defined in the General Conditions, shall have the meanings indicated in the General Conditions.

16.2. The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

16.3. CITY and CM@RISK each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in these Contract Documents.

17. ARTICLE SEVENTEEN – CONFLICT OF INTEREST

CM@RISK stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Coolidge is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

18. ARTICLE EIGHTEEN - TERMINATION WITHOUT CAUSE

CITY may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to CM@RISK specifying the termination date. Immediately after receiving such notice, CM@RISK shall discontinue advancing the work under this Agreement and shall deliver to CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY. If this Agreement is terminated, CM@RISK shall be paid for work performed to the date of receipt of such termination notice.

19. ARTICLE NINETEEN – IMMIGRATION WARRANTY

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the CM@RISK hereby warrants to the City that the CM@RISK and each of its subcontractors (“Subcontractors”) will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in 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 that is subject to penalties up to and including termination of the contract.

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

The City may, at its sole discretion, conduct random verifications of the employment records of the CM@RISK and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The CM@RISK agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the CM@RISK 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.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

City of Coolidge

Construction Manager at Risk

ADDRESS FOR NOTICE:

ADDRESS FOR NOTICE:

Attest:

Attest:

City Clerk

Secretary

Approved as to Form:

City Attorney

Contractor Immigration Warranty

To Be Completed by CM@RISK Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form and attached Employee Verification Worksheet the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Project Title:		
Contractor Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. The contractor has identified all contractor and subcontractor employees who perform work under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Contractor (Employer) or Authorized Designee:

Printed Name: _____

Title: _____

Date (month/day/year): _____

**CITY OF COOLIDGE, ARIZONA
CERTIFICATE OF INSURABILITY**

**CITY OF COOLIDGE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS

_____, Arizona

Date _____

Project Name: Aquatics Center / Northern Avenue Reconstruction

To the City of Coolidge, Arizona

Ladies and Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the City of Coolidge against any and all liens, claims or liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances and materials furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____
20_____.

CONTRACTOR

By _____

STATE OF ARIZONA)

) SS

COUNTY OF PINAL)

The foregoing instrument was subscribed and sworn to before me this _____ day
of _____ 20 _____.

Notary Public

My Commission Expires

**CITY OF COOLIDGE, ARIZONA
PUBLIC WORKS DEPARTMENT**

CERTIFICATE OF COMPLETION

Project Name: Aquatics Center / Northern Avenue Reconstruction

(TO BE COMPLETED BY CONTRACTOR)

I HEREBY CERTIFY THAT ALL GOODS AND/OR SERVICES REQUIRED BY CITY OF COOLIDGE PROJECT NAME AQUATICS CENTER / NORTHERN AVENUE RECONSTRUCTION HAVE BEEN DELIVERED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND BID SPECIFICATIONS AND ALL ACTIVITIES REQUIRED BY THE CONTRACTOR UNDER THE CONTRACT HAVE BEEN COMPLETED AS OF _____.

(Date)

FIRM NAME: _____

PRINCIPAL: _____

(Name)

(Signature)

DATE: _____

(Title)

CERTIFIED BY ENGINEER/CONSULTANT:

DATE: _____

(Signature)

(Firm Name)

PROJECT ACCEPTED BY USER DEPARTMENT

DATE: _____

(Signature)

(Dept./Div.)

_____ Date of Final Walk-Through

_____ Date As-Built Received

_____ City As-Built Number

APPENDIX “C”
REQUIRED SUBMITTAL FORMS

Note: One completed original copy of each of the following forms **MUST** be provided with the Statement of Qualifications submittal package.

SUBMITTAL ACKNOWLEDGMENT

To the City of Coolidge:

The undersigned hereby submits and agrees to furnish the materials in compliance with all terms, conditions, specifications and amendments in the Solicitation. Signature also certifies understanding and compliance with the City of Coolidge’s Standard Terms and Conditions.

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: _____ FAX : _____

CONTACT PERSON: _____ CONTACT EMAIL: _____

AUTHORIZED COMPANY SIGNATURE _____

THIS FORM MUST BE SIGNED AND RETURNED WITH SUBMITTAL

NON-COLLUSION AFFIDAVIT

State of _____)
County of _____) ss.

_____, affiant,
(Name)

the _____ of
(Title)

(Contractor/Bidder)

who is the person or other entity that makes the accompanying Submittal, having first been duly sworn, deposes and says:

That such Submittal is genuine and not sham or collusive, nor made in the interest of, or on behalf of, any persons not herein named, and that the Submitter has not directly or indirectly induced or solicited any other Submitter to put in a sham bid, or any other person, firm, company or corporation to refrain from making a submittal, and that the Submitter has not in any manner sought by collusion to secure for itself an advantage over any other Submitter.

(Title)

Subscribed and sworn to before me
this _____ day of _____, 2020

Notary Public:

My Commission Expires: _____

Authorization for Release of Performance Information and Waiver

I, _____, the undersigned, on behalf of (this company), being duly authorized to do so, do hereby consent and authorize all those companies and government entities listed in my Submittal to the City of Coolidge, and any other government entity for whom this company has performed pre-construction and/or construction services, to disclose and release to the City of Coolidge, or its representatives, information, records and opinions concerning this company's performance. The purpose of this disclosure is to provide references and background material to the City of Coolidge. This company hereby waives any claim it may have against the City of Coolidge or any company or entity providing information to the City of Coolidge by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.

This authorization shall be effective for one year, and a copy of this authorization shall be as valid and effective as the original.

Dated: _____

By: _____

Title: _____