



**TOWN OF
QUEEN CREEK, ARIZONA**

GENERAL CONDITIONS

REVISED SEPTEMBER, 2018

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SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS

These General Conditions encompass provisions that apply, and are incorporated into all construction contracts entered into by the Town of Queen Creek, unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CM@Risk), Guaranteed Maximum Price (GMP) Cost-Based, and Job Order Contracts (JOC).

SECTION 2 — GENERAL DEFINITIONS

Note: Additional definitions of terms that only have application to contracts involving Guaranteed Maximum Price (GMP) and Cost-Based Contracts, Change Orders and Job Orders are found in Section 15.1 below; and additional definitions of terms that only have application to Job Order Contracts (JOCs) are found in Section 16.1 below; and additional definitions of terms that only have application to contracts involving Pre-Construction Services or Preconstruction Services are found in Sections 17.1 below.

2.1. Change Order – A written instrument issued after execution of the Contract Documents signed by Town and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

2.2. Town (Owner or OWNER) – Town of Queen Creek, a municipal corporation, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

2.3. Contract – The written agreement executed between Town and Contractor, including all of the Contract Documents.

2.4. Contract Documents – The documents which together form the Contract between Town and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, any Notice to Proceed, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, MAG Specifications and Town's amendments thereto, and any other documents so designated in the Contract.

2.5. Contract Price – The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

2.6. Contract Time(s) – The number of days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract, and is based upon the Project Schedule agreed to by Town in writing.

2.7. Contractor – The person or corporation with whom Town has entered into an agreement for construction related work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes CM@Risk and JOC under contract with Town to provide pre-construction and/or construction services.

2.8. Contractor Payment Request – The form that is accepted by Town and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or Town.

2.9. Construction Documents – The plan, specifications, and drawings prepared and issued by the Contractor and approved by Town for construction, meaning the documents are sealed by the Contractor (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and

modifications to the Construction Documents must be approved in writing by Town prior to incorporation into the Contract.

2.10. Critical Path – Critical path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of Town.

2.11. Day – Calendar day(s) unless otherwise specifically stated in the Contract Documents.

2.12. Contractor – The qualified, licensed person, firm or corporation who furnished design services required under the Contract Documents to include, but not limited to: development of the Construction Documents, review of Contractor Submittal(s), response to Request for Information, approval and certification of progress payment applications, construction administration, Substantial Completion, and Final Acceptance and Completion, if so designated.

2.13. Float – The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to Town.

2.14. MAG Specifications – The latest revision of the 2012 edition (or the latest edition adopted by the Town) of the Uniform Standard Specifications for Public Works Construction published by MAG.

2.15. MAG Standard Details – The latest revision of the 2012 edition (or the latest edition adopted by the Town) of Uniform Standard Details as published by MAG.

2.16. Notice to Proceed (NTP) – A written notice given by Town to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract. The Notice to Proceed shall not be issued until the Contract Price is approved and accepted by Town.

2.17. Project – The Project specified in the Contract (including a Job Order).

2.18. Project Manager – The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by Town. The Project Manager has the authority to act on behalf of Town, as delineated and limited by the Contract Documents and applicable law. And Town shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind Town or Town Council in contravention of any Town code, State or Federal statute or regulation, or these General Conditions.

2.19. Project Schedule – The schedule for the completion of the Project agreed to and/or required by Town and incorporated into the Contract as Exhibit A thereto.

2.20. Project Specific Conditions – Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D of the Contract.

2.21. Proposal – A Proposal submitted to the Town by a Contractor in response to an Request for Qualifications (RFQ), an Request for Proposals (RFP) or other solicitation or request by the Town. Proposals may be Fixed Price, Guaranteed Maximum Price (GMP), Unit Price, or other form as required or requested by the Town.

2.22. Requests for Information (RFIs) – Formal written request from Contractor to Town and/or Contractor for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. Town may require RFI's to be submitted on a specific form or in a specified format.

2.23. Schedule of Values (SOV) – The specified document prepared by Contractor, and approved and accepted by Town, which divides the Contract Price into pay items, such that the sum of all pay items

equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

2.24. Scope of Work – The scope of work agreed to and/or required by Town and incorporated into the Contract as Exhibit A.

2.25. Subconsultant – A person, firm or corporation having a Contract with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

2.26. Subcontractor – An individual or firm having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any.

2.27. Total Float – Number of Days by which the pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.

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

SECTION 3 — STANDARD SPECIFICATIONS AND DETAILS

3.1 Town operates under the latest revision of the MAG Specifications as amended by Town. Town's current effective amendment to the MAG Specifications may be downloaded from Town's Web site at: _____.

3.2 Town also operates under the MAG Standard Details, as amended by Town. Town's currently effective amendment to the MAG Standard Details may be obtained at the Development and Sustainability Department Permit Counter for nominal cost, or on Town's Web site referenced above.

3.3 Copies of the MAG Specifications and MAG Standard Details are available at the Maricopa Association of Governments office, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona and may also be downloaded at their Web site: <http://www.mag.maricopa.gov/> under "Publications."

3.4 The MAG Specifications and Standard Details and Town's amendments thereto are incorporated into the Contract.

**SECTION 4 — CONTRACTOR'S RESPONSIBILITIES
FOR CONSTRUCTION SERVICES**

4.1 General

4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of Town, exercising the degree of professional care, skill, diligence, quality and judgment that a professional Contractor engaged, experienced and specializing in the construction of construction and/or facilities of similar scope, function, size, quality, complexity and detail in urban areas throughout the United States comparable to Queen Creek, Arizona would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.

4.2 Contractor's Pre-Contract and Pre-Work Deliverables

4.2.1 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to Town the items listed in Sections 4.2.3 and 4.2.4 below, and the Contract must be executed by Town. Failure to do so will be a material breach of the Contract entitling Town to terminate the Contract for Cause.

4.2.2 When Contractor delivers the executed Contract to Town, Contractor shall also deliver to Town such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by Town) required under Section 11 of these General Conditions, and as the Contract requires.

4.2.3 Government Approvals and Permits. Contractor shall obtain all necessary permits for the Work and pay all applicable fees, unless otherwise noted on the plans and in the specifications. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits and the associated notices must be provided to Town prior to starting the permitted activity.

4.3 Pre-Construction Conference

4.3.1 Prior to the commencement of any Work, Town will schedule a Pre-Construction Conference.

4.3.2 Prior to the Pre-construction Conference, Contractor shall provide the Project Team with a Schedule of Values in a form specified by Town reflecting the subcontracts and other categories that will be used to submit Pay Applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price and shall identify Contractor's Contingency, if applicable. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from Town. Once accepted by Town in writing, the Schedule of Values for the Project will not be changed without the prior written approval of Town.

4.4 Performance of the Work (including Field Measurements, Subcontractors, and Suppliers)

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

4.4.2 Contractor's Superintendent shall be present at the Site at all times that material Work under this Contract is taking place. Contractor's Superintendent or designee shall be present at the Site at all times any other Work under this Contract is taking place. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

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

4.4.4 If Contractor observes error, discrepancies or omissions in the Contract Documents, it shall promptly notify the Contractor and Town and request clarification. Contractor shall be liable to Town for damages resulting from error, inconsistencies or omissions in the Contract Documents or for differences

between field measurements or conditions in the Contract Documents. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to Town, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk.

4.4.5 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to Town.

4.4.6 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Town and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.7 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of Town. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by Town, Contractor will follow that plan unless otherwise approved by Town in writing.

4.4.8 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to Town, and receiving prior written approval of the change from Town, which approval will not be unreasonably withheld.

4.4.9 Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in writing by Town.

4.5 Control of the Project Site

4.5.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Town to occupy the Project or a portion of the Project for its intended use

4.5.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of Town and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.

4.5.3 Contractor shall be responsible to Town for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.6 Project Safety

4.6.1 Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the site.

4.6.2 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.6.3 Contractor shall provide a “competent person” as required by O.S.H.A regulations. The “competent person” shall be identified at the Pre-Construction Conference with Town advised in writing of any changes.

4.6.4 Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any Town specific safety requirements set forth in the Contract Documents, provided that such Town-specific requirements do not violate any applicable legal and regulatory requirements.

4.6.5 As between Town and Contractor, Contractor is responsible to Town for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.6.6 Contractor shall maintain and have sole responsibility for safety on the job site.

4.7 Materials Quality, Substitutions and Shop Drawings

4.7.1 Quality Control and Quality Assurance Testing. All construction materials to be used or incorporated in the Project are subject to inspection, Quality Control & Quality Assurance Testing, and approval or rejection by Town. Any material rejected by Town shall be removed immediately and replaced in an acceptable manner to Town at no additional cost to Town. When QC/QA tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

4.7.2 Shop Drawings

4.7.2.1 Contractor shall prepare and submit Shop Drawings which show details of all work to insure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.7.2.2 A schedule of Shop Drawing submissions shall be submitted with the Project Schedule for Town approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, Shop Drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of Shop Drawing submissions shall include all of the items for which Shop Drawings are required by the Contract Documents, including the Specifications.

4.7.2.3 Shop Drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- (a) All working and erection dimensions.
- (b) Arrangements and sectional views.
- (c) Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- (d) Kinds of materials and finishes.
- (e) Parts list and description thereof.

4.7.2.4 Contractor shall schedule, prepare and submit all shop drawings in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate,

manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.7.2.5 The review of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by Shop Drawings shall be initiated until such drawings have been reviewed and approved by Town.

4.7.3 Long Lead Time Items. Contractor shall submit Shop Drawings, as required by the Engineer, on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

4.8 Project Record Documents

4.8.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.

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

- (a) Dimensional changes to the Drawings.
- (b) Revisions to details shown on Drawings.
- (c) Locations and depths of underground utilities.
- (d) Revisions to routing of piping and conduits.
- (e) Actual equipment locations.
- (f) Changes made by Change Order or Addendum.
- (g) Details not on original Contract Drawings.

4.8.6 Contractor shall submit Project Record Drawing sets and Shop Drawings to Town or its representative for review and comment.

4.8.7 Upon receipt of the reviewed Project Record Drawings from Town, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to Town prior to Final Acceptance and as a condition of Final Acceptance.

4.8.8 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

4.9 Warranty and Correction of Defective Work

4.9.1 Contractor warrants to Town that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans and specifications and all other terms and conditions of the Contract Documents, including all

materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.9.2 The date of Substantial Completion shall be the beginning of the Warranty period, irrespective of early completion by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Substantial Completion and that expire no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.

4.9.3 Contractor's warranty obligation shall be in accordance with MAG Specifications.

4.9.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to Town all of the following written warranties that apply to the Work, in a form acceptable to Town.

- (a) General Warranty — Two (2) years.
- (b) Mechanical Contractor — Two (2) years.
- (c) Plumbing Contractor — Two (2) years.
- (d) Electrical Contractor — Two (2) years.
- (e) Roofing Contractor — Two (2) years.
- (f) Roofing Manufacturer — Ten (10) years.
- (g) Caulking — One (1) year.
- (h) Steel Joists, Certificate of Manufacture.
- (i) Exterior Metal Wall System — Five (5) years.
- (j) Painting — One (1) year.
- (k) Termite — Five (5) years.
- (l) Sheet Metal: Zinc coating thickness on hot-dipped galvanized.
- (m) Metals- One (1) year.
- (n) Acoustical Tile — Five (5) years.
- (o) Resilient Floor Covering — One (1) year.

4.9.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides Town with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide Town with all manufacturers' warranties prior to Final Acceptance.

4.9.6 A progress payment, or partial or entire use or occupancy of the Project by Town, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.9.9 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to Town all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. Town and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.9.

SECTION 5 — TOWN'S RESPONSIBILITIES

5.1 Town Project Manager and Inspectors. Project Manager is responsible for providing Town-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Contract Documents.

5.2 Contractor Services. Town may contract separately with one or more Contractors to provide construction administration of the Project. The Contractor's Contract, as well as other firms hired by Town shall be furnished to Contractor. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to Town and Contractor.

SECTION 6 — CONTRACT TIME

6.1 Contract Time

6.1.1 The Contract Time shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth in Section 6.4 below.

6.1.2 The Notice to proceed shall be issued in accordance with MAG Specifications § 108.

6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.

6.1.4 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

6.2 Project Schedule

6.2.1 The Project Schedule shall be updated and maintained throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by Town.

6.2.3 An updated Project Schedule shall be submitted monthly to Town as part of the Payment Request.

6.2.4 Contractor shall provide Town with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 Acceptance of a submitted schedule by Town should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. Town's review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.6.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

6.2.7 Float Time

6.2.7.1 The total Float Time within the overall schedule is for the exclusive use of Town, but Town may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.7.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.7.3 Rain-Related Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on Contractor.

6.3 Substantial Completion

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which Town agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment

6.3.2 Upon receipt Contractor's Punch List, Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that Town can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, compete or correct such item upon notification by Project Manager.

6.3.3 Certificate of Substantial Completion. The Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by Town for its intended purpose, opening to the general public, full occupancy or use by Town (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been

issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by Town, subject only to the Punch List Items.

6.4 Final Acceptance and Final Completion

6.4.1 Unless otherwise expressly agreed to in writing by Town, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Completion will be a material breach of the Contract.

6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, Town and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued and Final Completion shall not occur until all items of work, including Punch List Items, have been completed to Town's satisfaction as reflected in the written Final Acceptance.

6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by Town until Final Completion is obtained.

SECTION 7 — CONTRACT PRICE

7.1 Fixed Price Contracts. The Contract Price for all Fixed Price Contracts shall be the amount set forth in the Contract. See Section 15 for the Contract Price of Guaranteed Maximum Price Contracts; Section 16 for the Contract Price for Job Order Contracts; and Section 17 for CM@Risk Contracts.

7.2 Town Sales Tax. Contractor is required to pay Town of Queen Creek Sales Tax on any contracting activity done for the Town of Queen Creek, and this cost shall be included in all Contract Prices.

SECTION 8 — PAYMENT

8.1 Payment For Construction Services

8.1.1 Payment for the Work will be made in accordance with MAG Specifications § 109 as amended below.

8.1.2 In MAG Specifications § 109.7 (A), replace the first paragraph of the subsection with the following:

Town will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on form provided by Town, and approved by Project Manager in accordance with Section 8.2.2 of the General Conditions. The monthly payment cycle will start with the date of the Notice to Proceed. Town may process payments more frequently if requested by Contractor and agreed to in writing by Town.

8.1.3 Payments shall be made pursuant to A.R.S. § 34-609.

8.1.4 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of Town's rights to withhold or offset payments, and/or other rights of Town, under the Contract.

8.1.5 Town reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if Town determines that satisfactory progress is not being made.

8.2 Final Payment. Subject to all of Town's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by Town; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings (including the Building Information Model, if required by the Contact Documents), plans and specifications have been delivered to Town, as specified in this Section 8.4; (iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor; (iv) all conditions and requirements imposed by Town or any financing entity for the corresponding disbursement have been met; and (v) Contractor delivers to Town a Contractor Payment Request Form requesting Final Payment.

8.3 Town's Right to Withhold Payment. Town may withhold payment to such extent as may necessary in Town's opinion to protect Town from loss for which Contractor is responsible.

8.4 Liens and Bond Claims. Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as Town may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of Town, or against payments due from Town to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of Town, against payment due from Town to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless Town from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

8.5 Financial Record Keeping and Town's Audit Right

8.5.1 Records for all Contracts between Town and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Town or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.5.2 Town, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at Town's discretion, within three (3) years of Final Acceptance of the Work.

SECTION 9 — CHANGES TO THE CONTRACT

9.1 Extra Work/Changes in the Work

9.1.1 Town reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order or Extra Work Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 Contractor shall not be entitled to payment for additional work unless a written Change Order or Extra Work Order, in form and content prescribed by Town, has been executed by Town prior to starting the additional work.

9.1.3 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

9.2 Accuracy of Change Order Pricing Information. Signature by the contracting parties shall constitute full accord and satisfaction between Town and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

SECTION 10 — SUSPENSION AND TERMINATION

10.1 Suspension. Town may suspend the Contract and/or Contractor's performance in accordance with MAG Specifications § 105.1.

10.2 Termination by the Town for Cause

10.2.1 MAG Specifications § 108.11 applies to the Contract.

10.2.2 Town may also terminate the Contract if Town determines, in its sole discretion, that Contractor has:

- (a) Refused or failed to supply enough properly skilled workers or proper materials;
- (b) Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
- (c) Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- (d) Otherwise breached a provision of the Contract Documents or any other contract between Town and Contractor.

10.2.3 When any of the above reasons exist, Town may terminate the Contract, without prejudice to any other rights or remedies of Town, after giving Contractor and Contractors' surety, if any, seven (7) days' prior written notice of Town's intent to terminate the Contract and Contractor's failure to cure any such reasons. Upon such termination, Town may: (1) take possession of the Site and of all materials thereon owned by Contractor; and/or (2) finish the Work by whatever reasonable method Town may deem expedient. When Town terminates the Contract for one of the reasons state above, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price, excluding any remaining Contingency existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by Town, such excess shall be paid to Contractor. If such costs, expenses and damages exceed such unpaid balance, Contractor shall pay the difference to Town. This obligation for payment shall survive termination of the Contract.

10.3 Termination by Town for Convenience. Town may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, Town shall pay to Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from Town to Contractor.

10.4 A.R.S. § 38-511. The Contract is subject to, and may be terminated by Town in accordance with, the provisions of A.R.S. § 38-511.

10.5 Non-Appropriation. Town is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If Town determines that it does not have funds to meet its obligations under the Contract, Town shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project.

10.6 Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

SECTION 11 — INSURANCE AND BONDS

11.1 Insurance Requirements

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in Exhibit B of the Contract.

11.1.2 Town may, in the Contract Documents, designate additional insured(s) along with Town (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to Town under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.

11.2.3 Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.1.4 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to Town separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

11.2 Bonds and Other Performance Security

11.2.1 Prior to execution of the Contract, Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds.

11.2.3 The bonds shall be made payable and be acceptable to Town. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, *et seq.*

11.2.4 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.

11.2.5 Personal or individual bonds are not acceptable.

SECTION 12 - INDEMNIFICATION

12.1 To the fullest extent permitted by law, Contractor, its successors and assigns shall indemnify and hold harmless the Town and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any laws, regulations, or legal requirements. Contractors' duty to defend, indemnify and hold harmless Town and its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused by any act or omission of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12.2 Contractor shall also defend, indemnify and hold harmless Town, the Contractor, any jurisdiction or agency issuing permits for any work involved in the project and their consultants and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the work itself), attorney's fees and other costs including costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of the Work and all of Contractor's obligations under the Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

12.3 The indemnified party shall have the right to approve the legal counsel selected by Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

12.4 The defense, indemnification, hold harmless provisions and Town's Liability Insurance set forth herein shall survive any termination of the Contract.

SECTION 13 — DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

13.2 Dispute Resolution Representative ("DRR") Process

13.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project ("Claim" or "Claims") shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the "DRR Process").

13.2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) for claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the Town setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

(b) For claims by the Town, the DRR process will be initiated by the Town providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

(c) The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice ("DRR Response") within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager and the representatives of the Contractor and of the Design Professional shall act as the parties' designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

13.3 Mediation

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to ¶ B (5) above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

13.3.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Maricopa County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.

13.3.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

13.3.4 Each party shall provide to the other party and the mediator all of the information and documentation required under B(1) and (2) above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

13.3.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Queen Creek, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

13.4 Arbitration

13.4.1 If the mediation is unsuccessful, the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then current Construction Industry Arbitration Rules of the AAA, but not administrated or conducted by the AAA, which arbitration shall be held in Maricopa County, Arizona, utilizing a single arbitrator selected by the parties, unless the parties agree, in writing, to an alternative arbitration procedure.

13.4.2 If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed and the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the Arbitrator, and thereafter the arbitration shall be administered by the AAA.

13.4.3 The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction related practice, and whose practice, for at least the last five (5) years, consists of at least 50% construction law.

13.4.4 At the request of either party, the arbitration may include as parties, through joinder, consolidation or otherwise, additional persons or entities involved in the Project, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.

13.4.5 In relation to claims in which the amount in controversy is less than \$250,000, no discovery other than exchange of documents, designation of witnesses and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims), and no more than 3 depositions and 1 expert per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.

13.4.6 The prevailing party in any arbitration or court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.

13.4.7 A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

13.4.8 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.

13.4.9 The party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that party on which arbitration is permitted to be demanded.

13.4.10 Any award by the arbitrator shall not include any consequential or punitive damages.

13.4.11 The award entered by the arbitrator shall be a reasoned award.

13.4.12 The award entered by the arbitrator shall be final and judgment may be entered thereon in the Arizona Superior Court.

SECTION 14 — MISCELLANEOUS PROVISIONS

14.1 Assignment. Neither Contractor nor Town shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

14.2 Governing Law and Venue. In the performance of the Contract, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona, Maricopa County, and the Town of

Queen Creek including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.

14.3 Survival. All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

14.4 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.

14.5 Project Communications

14.5.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.5.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications are not binding upon Town and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

14.6 Bids. All General Contractors and Subcontractors shall hold their bids valid for a period of 60 days from the proposal due date stated on the Advertisement for Bids.

SECTION 15 - PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED CONTRACTS, CHANGE ORDERS, AND JOB ORDERS

Note: The provisions in this Section 15 only apply to Contracts or Change Orders involving Guaranteed Maximum Price (GMP) or cost-based pricing.

15.1 Additional Definitions.

The definitions set forth in Sections 1 apply to GMP and Cost-Based Contracts, Change Orders, and Job Orders, together with the additional definitions set forth below.

15.1.1 Allowance - A specific amount for a specific item of Work, if any, that Town agrees has not been sufficiently designed, detailed, or selected at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 7.4 of these General Conditions.

15.1.2 Baseline Cost Model – A breakdown and estimate of the scope of the Project developed by CM@Risk pursuant to Section 17.5.1 of these General Conditions.

15.1.3 CM@Risk or Construction Manager at Risk - The person or firm selected by Town to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with Town. In these General Conditions, the term "Contractor" includes CM@Risk under both pre-construction and construction services contracts.

15.1.4 CM@Risk Fee or Contractor's Fee – An agreed to percentage in an accepted GMP that represents the Contractor's fee for performance of the Work.

15.1.5 Contingency – An agreed to amount in the GMP that may only be used in accordance with the terms set forth in Section 15.4 of these General Conditions.

15.1.6 Contract Documents - Where compensation under the Contract is based upon a GMP accepted by Town, the term "Contract Documents" also include the accepted Proposal.

15.1.7 Contract Price - Where compensation under the Contract is based upon a GMP accepted by Town, the term "Contract Price" refers to the GMP.

15.1.8 Cost-Based Contract, Change Order, or Job Order – A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents, including this Section 15. These would include those generally referred to as "Cost of the Work plus a Fee with a GMP", "Time and Materials", or "Cost Plus a Fee".

15.1.9 Cost of the Work - The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance of the Work. The Cost of the Work shall include only those costs set forth in Sections 15.2 and 15.3 of these General Conditions.

15.1.10 Deliverables – The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during the pre-construction may include but are not limited to: the Baseline Cost Model and Schedule that validate Town's plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

15.1.11 Detailed Project Schedule – The Detailed Project Schedule developed by the CM@Risk for the review and approval of the Project Manager in accordance with Section 17.3 of these General Conditions, if applicable.

15.1.12 General Conditions Costs – Those costs set forth in Section 15.3.4 of these General Conditions.

15.1.13 GMP Plans and Specifications – The plans and specifications upon which the Guaranteed Maximum Price Proposal is based.

15.1.14 GMP Proposal - The proposal of Contractor based upon a GMP submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portions (phases) of the Work.

15.1.15 Guaranteed Maximum Price or GMP – The Guaranteed Maximum Price set forth in the Contract, Change Order, or Job Order if applicable.

15.1.16 Open Book – On any GMP-based or Cost-Based Contract, Job Order, or Change Order, Town may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

15.1.17 Preconstruction Services – The services to be provided under the Pre-Construction Services Contract, including Section 3 of the Contract, including without limitation those set forth in Section 17 below of these General Conditions.

15.2 Contract Price.

15.2.1 The Contract Price for all Contracts, Change Orders, and Job Orders based upon payment of the Cost of the Work plus a Fee with a GMP, time and materials, or cost-plus a fee shall be the Cost of the Work incurred plus the Fee agreed to in writing by Town, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Contract, Change Order, or Job Order, all Cost Based pricing shall be subject to and limited to a GMP.

15.2.2 The Contract Price may only be changed as set forth in Section 9 above.

15.2.3 Only costs specifically designated as reimbursable costs are eligible for payment by Town or may be charged against the Contract Price. All other costs will not be paid by Town and shall not be chargeable against the Contract Price.

15.2.4 Cost-Based Contracts of \$250,000 or Less. For Contracts or Change Orders where the Contract Price is \$250,000 or less, reimbursable costs shall be determined pursuant to MAG Specifications § 109.5, and not Section 15.2.7 below.

15.2.5 Cost-Based Contracts Over \$250,000. For Contracts, Change Orders, or Job Orders where the Contract Price is over \$250,000, reimbursable costs shall be determined pursuant to the following Section 15.3, Cost of the Work, and not by MAG Specifications 109.5.

15.3 Cost of the Work.

15.3.1 Costs to be Reimbursed.

15.3.1.1 Generally. The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Town. The Cost of the Work shall include only the items set forth in this Section 15.3.1.

15.3.1.2 Labor Costs.

15.3.1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Town's approval, at off-site workshops. Cost to be reimbursed will be the actual wages paid to the individuals performing the work.

15.3.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Town's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to Project matters is considered to be covered by the Contractor's Fee.

15.3.1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

15.3.1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in

the Cost of the Work under Subparagraphs 1.2.1 through 1.2.3.

15.3.1.2.4.1 Cost of the Work shall include the actual net cost to the Contractor for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. The Contractor may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

15.3.1.2.4.2 Overtime wages paid to salaried personnel (if approved in advance in writing by the Town) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

15.3.1.2.4.3 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require Town's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

15.3.1.2.4.4 Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the Project:

- Medical Insurance, Dental, Life & AD&D Insurance: 12.00%
- Holiday, vacation and other paid time not worked: 10.00%
- Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans (Note: ESOP related costs are covered by the Contractor Fee) 10.00%

For non-union personnel, no other fringe benefit costs (other than the 3 specific categories listed immediately above, shall be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

15.3.1.3 Subcontract Costs

15.3.1.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

15.3.1.3.2 For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon Guaranteed Maximum Price for the "self-performed work". The Contractor may bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not to exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Contractor, or any

separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

15.3.1.3.3 Contractor (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide Town advance written notice and shall obtain Town's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

15.3.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

15.3.1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

15.3.1.4.2 Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become the Town's property at the completion of the Work or, at the Town's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Town as a deduction from the Cost of the Work.

15.3.1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

15.3.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

15.3.1.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

15.3.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Town's prior written approval.

15.3.1.5.2.1 The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the Project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Town, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Town and Contractor.

15.3.1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Contractor.

15.3.1.5.2.3 Equipment Rental Rates.

15.3.1.5.2.3.1 Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.

15.3.1.5.2.3.2 All equipment rental rates and costs are subject to the Town's right to audit when submitted as part of the Equipment Plan and/or at any time during the Project.

15.3.1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

15.3.1.5.2.5 Fair market value for used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

15.3.1.5.2.6 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Town, and the cost of such losses shall not be reimbursable under the Contract.

15.3.1.5.2.7 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Town each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.

15.3.1.5.2.8 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

15.3.1.5.3 Costs of removal of debris From the Site.

15.3.1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

15.3.1.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work. No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 100 miles from the Project location. Any travel involving airfare will require advance written approval by an authorized Town's representative.

15.3.1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Town.

15.3.1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page

for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

15.3.1.6 Miscellaneous Costs.

15.3.1.6.1 That portion of insurance and bond premiums that can be directly attributed to the Contract:

15.3.1.6.1.1 The Contractor's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

15.3.1.6.1.2 The amount to be reimbursed to the contractor for all contractually required liability insurance will be actual costs not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee). If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Contractor's Fee.

15.3.1.6. 2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

15.3.1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

15.3.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of ¶ 1.7.3 below.

15.3.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with the Town's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

15.3.1.6.6 Data processing costs related to the Work. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the FMV of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware shall be turned over to the Town whenever it is no longer needed for the Project. If the Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

15.3.1.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Town as set forth in the Contract Documents.

15.3.1.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Town and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Town's prior written approval; which approval shall not be unreasonably withheld.

15.3.1.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by the

Town in writing. If Town authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by Town will be considered to be covered by the Contractor's Fee.

15.3.1.7 Other Costs and Emergencies.

15.3.1.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Town.

15.3.1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

1 5.3.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

15.3.1.8 Related Party Transactions.

15.3.1.8.1 The term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

15.3.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Town in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Town, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Town fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.

15.3.2 Costs Not to be Reimbursed.

15.3.2.1 The Cost of the Work shall not include:

15.3.2.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 15.3.1.2.2 and 15.3.1.2.3.

15.3.2.1.2 Expenses of the Contractor's principal office and offices other than the site office.

15.3.2.1.3 Overhead and general expenses, except as may be expressly included in Section 1.

15.3.2.1.3.1 Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly the Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Contractor's home or branch offices, or other outside service locations.

15.3.2.1.4 The Contractor's capital expenses, including interest on the Contractor's

capital employed for the Work.

15.3.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 15.3.1.5.2.

15.3.2.1.6 Except as provided in Subparagraph 1.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

15.3.2.1.7 Any cost not specifically and expressly described in Section 1.

15.3.2.1.8 Costs, other than costs included in Change Orders approved by the Town, that would cause the GMP to be exceeded.

15.3.3 Discounts, Rebates, Refunds and Savings.

15.3.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Town if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Town, or (2) the Town has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to the Town, and the Contractor shall make provisions so that they can be secured.

15.3.3.1.1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

15.3.3.1.2 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Town if the Contractor is eligible to take advantage of the discounts.

15.3.3.2 Amounts that accrue to the Town in accordance with the provisions of Paragraph 3.1 shall be credited to the Town as a deduction from the Cost of the Work.

15.3.4 General Conditions Costs.

15.3.4.1 General Conditions Costs may include, but are not limited to the following types of costs incurred by the Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses.

15.3.4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by the Town.

15.3.4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by the Town.

15.3.4.4 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to the Town, subject to any express right in the Contract for the Contractor to share in savings. Savings are subject to the Town's right to audit, and may be audited separately.

15.4 Allowances.

15.4.1 Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by Town. Items covered by these Allowances shall be supplied for such amounts and by such persons as Town may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Town in accordance with a schedule to be mutually agreed upon by Town, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

15.4.2 Unless otherwise provided in the Contract Documents:

15.4.2.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowance, delivered at the Site, and all applicable taxes;

15.4.2.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and

15.4.2.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

15.5 Contingency.

15.5.1 The GMP includes a Contingency. The Contingency (but not the GMP) as set forth in the Schedule of Values shall be adjusted, as may be required, to reflect net savings or net losses resulting from the award of Subcontracts. The amount of the adjustment to the Contingency shall be determined by subtracting the face amount of each Subcontract at the time the Subcontract is entered into from the amount allocated in the initial Schedule of Values applicable to the Work to be performed under such Subcontract. Contractor may only permit funds to be expended from the Contingency for Cost of the Work incurred for completion of the Work after notifying Town in writing of such expenditure and obtaining written approval from Town of such expenditure.

15.5.2 After award of all major Subcontracts (representing at least 80% of the GMP), the Contingency may be used by Town for Town initiated Change Orders, provided that there remains in the Contingency an amount equal to the original percentage of the Cost of the Work as represented by the Contingency set forth in the GMP. At mutually agreed upon milestones, Town and Contractor shall meet and confer to analyze the Contingency and determine methods of reducing such Contingency for the benefit of Town for use on the Project to implement scope changes to the Work or otherwise to make the Contingency available for Town's use. To support such analysis, Contractor shall identify any actual or known potential claims against it or actual or reasonably anticipated events that would constitute permissible uses of the Contingency. After good faith negotiations, and upon the written request of Town, Contractor shall release to Town the requested amount of the Contingency. After Contractor releases any portion of the Contingency, any such release shall be evidenced by a Change Order.

15.6 Reduction In Retention.

If the Contract Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.2.2.3 above, Contractor must also submit to the Project Manager a complete accounting of the actual reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of

payment, etc.) as Town may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by Town, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Town. The Project Managers determinations as to actual reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract. There is no retention for Job Order Contracting construction services contracts.

15.7 Final Payment.

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by Town, Contractor must submit to the Project Manager a complete final accounting of the actual reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Town may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by Town, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Town. Disputes relating to the final Cost of the Work shall be subject to Town's audit rights under Sections 8.9 above and 15.7 below, and the dispute resolution process under Section 13 above.

15.8 Open Book.

In addition to the foregoing, all Cost-Based Contracts, Job Orders, or Change Orders, shall be Open Book.

15.9 Differing Site Conditions and/or Change In Laws.

A Change Order for increased costs under Section 9.4 or 9.5 above will only be considered or granted by Town to the extent such actual, documented costs exceed the remaining amount of the Contractor's Contingency.

SECTION 16 – PROVISIONS APPLICABLE SOLELY TO JOB ORDER CONTRACTS (JOC)

Note: The provisions in this Section 16 only apply to Job Order Contracts. To the extent the Contract Price for a Job Order is a GMP or Cost-Based, the provisions of Section 15 above will also apply. To the extent a Job Order may include design services, the provision of Section 17 and/or 18 below may also apply.

16.1 ADDITIONAL DEFINITIONS

The definitions set forth in Sections 1 and below shall apply to a Job Order Contracts and Job Orders. In addition, the definitions set forth in Section 15.1 above shall apply to all Cost-Based Job Orders.

16.1.1 Bid Schedule – The Bid Schedule shows the Contractor's Coefficients and Project Schedule of Values (subcontracted costs). The Bid Schedule is incorporated into the Contract as a result of final negotiations with Contractor during the second step of the selection process, and incorporated into the Contract as Exhibit B thereto.

16.1.2 Contract – Includes specific Job Order Contract and Job Orders issued and agreed to by Town and Contractor.

16.1.3 Contractor's Coefficient - A numerical factor that represents Contractor total costs (indirect and direct costs, sales tax, profit, etc.) and other adjustments for market conditions.

16.1.4 Contractor's Job Order Proposal – The Proposal submitted by Contractors in

response to an RFP issued by Town to develop a Job Order.

16.1.5 Guaranteed Maximum Price or GMP (Open Book) Job Order – Job Order under which payment to Contractor is based upon Open Book costs as provided under this Section 16.

16.1.6 Job Order - The document for a Project executed by Town under a Job Order Contract, as it may be modified by all Change Orders, if any, relating to the Project.

16.1.7 Job Order Proposal – The proposal submitted by Contractor for each Project.

16.1.8 Job Order Request for Proposal (RFP) - The Request for Proposals issued by Town for each Job Order Project.

16.2 ORDERING AND PROCESSING PROCEDURES FOR JOB ORDERS

16.2.1 The process for developing and issuing a Job Order for a particular Project consists of three (3) procedures: (1) issuance of a RFP by Town; (2) Contractor's response to the RFP in the form of Contractor's Job Order Proposal; and (3) Issuance of a Job Order by Town, as set forth below.

16.2.2 RFPs For Job Orders

16.2.2.1 Town will provide to Contractor an RFP with a Scope of Work (SOW) describing the Work to be performed, which may include special instructions and conditions, material submittal requirements, and, if applicable, a complete set of sketches, construction drawings and specifications for the Job Order.

16.2.2.2 Some Job Order RFPs will be issued by Town without detailed sketches, drawing and specifications and will rely on Contractor to produce them for Town review and approval and is considered to be preconstruction and incidental design services included in Contractor's Coefficients and overhead for GMP (Open Book) Job Orders. In addition Contractor will not be reimbursed for any pre-Job Order costs, including proposal preparation, attendance during negotiations, or site visits.

16.2.2.3 Town will identify the type of Price Proposal Contractor should submit in response to the RFP for each Job Order Project. Town and Contractor may agree to structure any Job Order on either a Fixed Price or GMP (Open Book) basis, depending upon the magnitude, complexity and duration of the underlying Project. If the parties are unable to agree on the structure of a Job Order, then the Job Order shall be structured as determined by Town.

16.2.3 Contractor's Job Order Proposal

16.2.3.1 Contractor shall respond within ten (10) calendar days of the RFP date or site visit, whichever is later or as otherwise indicated on a case-by-case basis, by submitting Contractor's Job Order Proposal to the designated Town representative.

16.2.3.2 Unless otherwise required under the terms of the RFP, Contractor's Job Order Proposal shall include the following:

16.2.3.2.1 Contactor's Price Proposal (either Fixed Price or GMP (Open Book) as set forth below);

16.2.3.2.2 A Project Schedule showing all milestones (e.g., ordering materials, demolition, work phasing, and completion date); and

16.2.3.2.3 Necessary documentation to indicate that adequate scoping, layout, setup and planning to accomplish the work have been completed. Examples of documentation that might reasonably be expected include sketches, drawings, calculations, catalog cuts and specifications produced

to a level of detail and skill that could be expected of experienced, competent project managers with five or more years experience in their respective trade.

16.2.3.3 For specific GMP (Open Book) Job Orders, Town may also require Contractor to comply with any or all of the requirements of Section 17.7 below.

16.2.3.4 Contractor's Price Proposal for Fixed Price Job Orders

16.2.3.4.1 Contractor's Price Proposal shall comply with Section 16.3.2 below.

16.2.3.5 Contractor's Price Proposal for GMP (Open Book) Job Orders

16.2.3.5.1 Contractor shall provide the Price Proposal for GMP (Open Book) Job Orders in the format as directed by Town. Unless otherwise instructed by Town in writing, all Price Proposals on GMP (Open Book) RFPs shall comply with Section 15 above of these General Conditions. Contractor's Price Proposals for GMP (Open Book) Job Orders must, unless otherwise expressly set forth in the RFP, include a GMP for total performance of the Work.

16.2.3.5.2 Contractor's Price Proposal shall include all costs broken down by division/specialty; a quote summary with at least three (3) quotes (if available), identification of the subcontractor for each quote, and the selected quote. These direct costs shall be totaled. The total Job Order cost shall be this total cost with reasonable General Conditions Costs, Profit, Tax and Bond, as set forth herein.

16.2.3.5.3 Direct job cost shall be based upon firm price quotes from Subcontractors on Contractor's approved Subcontractor list. To the extent practicable, Contractor shall obtain firm price quotes from three (3) Subcontractors for each discipline applicable to the project. If three (3) quotes cannot reasonably be obtained for a discipline, contract shall make known the reasons contractor was unable to obtain additional price quotes.

16.2.3.5.4 Contractor shall select Subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select Subcontractors based on price alone. A qualifications and price selection may be a one-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.

16.2.3.5.5 Upon request, Contractor shall provide Town with copies of Subcontractor quotes and the basis for selection of each subcontractor.

16.2.3.6 If Town objects to a selected Subcontractor, Town shall make the objection and the reasons for the objection known to the contractor. Contractor shall then present an acceptable Subcontractor for the applicable discipline. Town shall not unreasonably object to or withhold approval of a Subcontractor.

16.2.3.7 For self-performed work Contractor shall establish Contractor's costs by bidding their costs against at least three (3) other interested trade contractors. No self-performed work will be allowed to be performed on a lump sum basis.

16.2.3.8 The following shall be included in Contractor's Price Proposal for GMP (Open Book) Job Orders:

16.2.3.8.1 General Conditions Costs as set forth in Section 15.3.4 of these General Conditions.

16.2.3.8.2 Profit as a fixed multiplier applied to Direct Project Cost and General Conditions Costs for the Project.

16.2.4 Issuance of Job Order.

16.2.4.1 A Town Representative will compare the Contractor's Job Order Proposal with Town's estimate, schedules and other requirements, and then, if the Town Representative determines it is in the best interest of Town, arrange a meeting with Contractor, at which time the Contractor's Job Order Proposal will be discussed and negotiated.

16.2.4.2 If the Town Representative determines that it is in the best interest of Town, Town shall then issue a Job Order to Contractor for execution.

16.2.4.3 Specific Job Orders may vary, but unless otherwise agreed by Town in writing, the content of Job Orders under the Contract will generally be as follows, all of which will be signed and/or initialed by Contractor's designated representative:

(a) The description of the Scope of the Work and Project Schedule (attached as Exhibit A to the Job Order);

(b) The address or location of the Work;

(c) The Contract Price for Work (Construction) included in the Project;

(d) The total Contract Price for the total Job Order (if different than the Contract Price for Work (Construction));

(e) The liquidated damages (if any) applicable for failure to timely complete the Job Order;

(f) The name of the Contractor representative for the Project;

(g) The Drawings and Specifications (attached as Exhibit F to the Job Order);

(h) If any shop drawings, product data and/or samples are required for the Job Order, the date for delivery of each required item (included in the Project Schedule, Exhibit A to the Job Order);

(i) Unique Project Specific Conditions, if any, in Exhibit E to the Job Order, including, without limitation, whether any of the following are required: preconstruction conference, weekly progress meetings, field office, storage enclosure, materials and equipment handling facility, submittals, shop drawings, product data, equipment list, samples, project manual, schedule of values, Construction progress schedule, narrative reports, progress report, progress charts, progress photographs, materials status report, Construction diagram, Construction status report, operation and maintenance data, operating maintenance instructions and parts list, and as-built drawings;

(k) Unique Insurance Requirements for the Job Order, if any (attached as Exhibit C to the Job Order); and

(l) Unique Government Provisions Compliance for the Project, if any (attached as Exhibit D to the Job Order).

16.2.5 Job Order Intent. Each Job Order will be interpreted to include all items reasonably necessary to complete the Project under that Job Order as described in the scope of the Work in that Job Order. All Work shall be performed in a professional manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose, unless otherwise specified. The Notice to Proceed, and the Start Date established therein, shall be deemed an integral part of the Job Order the same as if set forth therein.

16.3 CONTRACTOR PRICING FOR JOB ORDERS

16.3.1 Job Orders shall be priced based on a Fixed Price or Open Book procedures. The required procedure shall be identified by Town in each Job Order Request for Proposal (“RFP”) for each Job Order, as set forth below.

16.3.2 Pricing for Fixed Price Job Orders

16.3.2.1 Contractor’s pricing for each Fixed Price Job Order shall consist of the Contractor’s Coefficients as listed in the Contractor’s Bid Schedule, Part A and the contractor’s subcontracted costs as listed in Bid Schedule Part B as described below. The Contractor’s Coefficient is a numerical factor that represents Contractor costs (indirect and direct costs, sales tax, profit, etc.) not considered to be included in the Total Cost Data for Fixed Price Job Orders.

16.3.2.2 Contractor’s Coefficient for Fixed Price Job Orders. Contractor’s Coefficient shall encompass all allowable Contractor costs not included in contractor’s subcontracted costs. Examples of such costs include in the Contractor’s Coefficient include: state taxes and payroll taxes, such as FICA, workmen’s compensation, state and federal unemployment taxes for direct payroll employees, superintendent salaries, builders risk insurance, mobilization and demobilization expenses and bond premiums; and various overhead expenses such as project estimating, site office overhead, field office buildings, furniture and equipment, office staff salaries, vehicle and construction equipment maintenance, office administrative expenses and a proportional share of home office overhead. The Contractor’s Coefficient shall also include all insurance, additional supervision, paperwork fees associated with a particular Job Order (i.e. environmental permits, estimates, reports, etc.), consultant fees for incidental design work, on- and off-site storage (except storage containers where required for property security by the Job Order), etc. The Contractor’s Coefficient shall encompass all costs other than subcontracted costs and shall include all adjustments to the Total Cost Data to compensate for any difference between these costs and actual market conditions. Contractor’s Coefficient shall also include costs described as costs to provide submittals, interface with Town representatives, coordination with occupants and other contractors.

16.3.2.3 Additional examples of Project Specific Costs Covered in the Contractor’s Coefficient for Fixed Price Job Orders. Contractor’s Coefficient shall also include costs for, but not limited to:

1. All Waste and excess material.
2. Mobilization and close out for the basic contract.
3. Lean up on each Job Order.
4. Safety (i.e.; Safety Rails, Safety Nets, tethers, hardhats and safety glasses,
etc.).
5. Project management and supervision.
6. Quality Control. Does not include core costs for paving.
7. Office management and equipment.
8. Depreciation of mobile office(s)
9. Subcontractor profit.
10. Record drawings, submittals, permits, license and other risks of doing
business.
11. Site Security.

12. Acceptance Testing.
13. Permits Under \$500.00 each. Permits required over this amount to be an Allowance.
14. Small Tools.
15. Vehicular Access & Parking.
16. Cleaning and Waste Management (Rubbish removal covered in Division 2).
17. Construction Progress Documentation.
18. Minor construction surveys; under \$250.00 per job Order.

16.3.4 Pricing For GMP (Open Book) Job Orders. GMP (Open Book) pricing shall consist of direct job cost, project-specific general conditions, general and administrative cost, profit, Bond cost and sales tax will be added to Open Book pricing for total Job Order Cost. The factors used in Open Book pricing shall be consistent with the Fixed Price Contractor Coefficients.

16.4 INCIDENTAL DESIGN SERVICES

16.4.1 Contractor represents, covenants and agrees, and contractually assumes the obligation to furnish, all of the required Incidental Design Services through properly licensed and experienced Design Professionals in complete accordance with all of the duties imposed on a Design Professional under the Contract Documents, Laws, Regulations, or Legal Requirements.

16.4.2 All Design Documents (and all other Project-related documents, models, computer drawings and other electronic expression, photographs and other expressions CADD, and BIM files and images included) that any Design Professional, Contractor and/or Contractor's Design Professional(s) prepare in connection with a Job Order and the copyrights therein (collectively, the "Instruments of Service") shall be the property of Town. Contractor covenants and agrees to execute any additional document reasonably requested by Town to confirm such assignment without any additional compensation.

16.5 CONSTRUCTION SERVICES

16.5.1 The following subsections of this Section 16.5 set forth requirements beyond those set forth in Section 4 above which apply to Construction Services performed under a Job Order.

16.5.2 Contractor shall perform the Work using only those firms, team members and individuals designated by Contractor consistent with each Job Order or otherwise approved by Town pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.

16.5.3 Construction Phasing.

16.5.3.1 Town's use of the facilities is anticipated while the Work is being performed. The Work shall be planned and accomplished so that there will be a minimum of interference and inconvenience to occupants in the building and agencies in the vicinity and to other craftsmen who may have to do work in the affected facilities. Any blockage of building exits or driveways must be coordinated in advance.

16.5.3.2 If applicable, furniture, portable office equipment and wall appurtenances not rigidly fastened to the walls shall be moved by Contractor, protected from damage and replaced to the original position upon completion of the work. If the work required by the Job Order will not allow furniture

and portable office equipment to be replaced to its original position, new locations will be designated by Town. Incidental costs associated with moving one-piece furnishings up to approximately 150 pounds to perform such tasks as painting, carpet or tile replacement, etc., are considered a general cost of building renovation and shall be included in the Contractor's Coefficient. Costs for large scale or wholesale removal and replacement of large quantities of desks or modular workstations, copiers, multiple full file cabinets, etc. to another location or storage outside the work space, or disassembly and reassembly of modular furniture is not considered part of the Contractor's Coefficient and will be priced separately.

16.5.3.3 The work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas which shall be completed before work in other sections or divisions are begun.

16.5.4 Work Site Conflicts. In the event of a conflict between Contractor and others in an occupied facility or where other contractors are performing work on the same facility under other contracts, Town shall decide the dispute and that decision shall be final.

16.5.5 Ownership of Work Product. In addition to the provisions of Section 16.4.2 above, and notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Town. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Town. The rights in this Section are exclusive to Town in perpetuity.

16.6 OPTIONAL LIQUIDATED DAMAGES

16.6.1 Specific Job Orders. If indicated in a specific Job Order, Town may have the right to assess liquidated damages in relation to that specific Job Order as set forth below.

16.6.2 Substantial Completion Liquidated Damages. Contractor acknowledges and agrees that if Contractor fails to obtain Substantial Completion of the Work within the Contract Time, Town will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, Town and Contractor agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Town shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the Substantial Completion Date required under the Job Order until the actual date of Substantial Completion.

16.6.3 Final Completion Liquidated Damages. For the same reasons set forth in Section 16.6.2 above, Town and Contractor further agree that if Contractor fails to achieve Final Completion of the Work within the Contract Time, Town shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Job Order, whichever is later, until the actual date of Final Completion.

16.6.4 If no specific liquidated damages amount is specified in a specific Job Order, and the Job Order so specifies, the provisions of MAG Specifications § 108.9 shall determine the amount of liquidated damages applicable to that specific Job Order.

16.6.5 Town may deduct liquidated damages assessed pursuant to this Section 16.6 from any unpaid amounts then or thereafter due Contractor under the Contract or any other agreement between Contractor and Town. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable to Town at the demand of Town, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.

16.7 PERFORMANCE MEASUREMENT

16.7.1 Performance Assessment. After the final completion of Work under each Job Order, Town may, at its sole discretion, complete a written evaluation of the performance of Contractor on the Job Order in accordance with Section 14.17 of these General Conditions.

16.7.2 Feedback. If Town opts to complete an evaluation, this will be shared with Contractor as a means of providing feedback regarding Contractor's cost, schedule and quality of performance. Contractor may submit additional information, comment, recommendations or rebuttal for association with the evaluation.

16.7.3 Comparative Assessment. Contractor's cost, schedule, and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated contractors. The results of these comparisons may be provided to Contractor. Contractor understands that these assessments will necessarily involve significant subjectivity. Contractor agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form or nature whatsoever.

16.7.4 Consideration in Assignment of Work. Contractor's record of cost, schedule and quality performance and comparative assessments shall be significant considerations in Town's determination whether to award future Job Orders. Contractor agrees that any determination by Town not to award future Job Orders based on performance will be at the sole discretion of Town.

SECTION 17 – PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES

Note: Unless otherwise specified in the Contract, the provisions in this Section 17 only apply to Contracts involving Pre-Construction services being performed by a CM@Risk (i.e., the Construction Manager at Risk Pre-Construction Services Contract). That is why in this Section 3, the term "CM@Risk" is utilized instead of the term "Contractor", which is utilized throughout the remainder of these General Conditions. See the definitions of "Contractor" in Section 1 above and "CM@Risk" in Section 15.1 above.

17.1 Additional Definitions

The definitions set forth in Sections 1 and 15.1 above shall apply to all Pre-Construction Services Contracts.

17.2 General

17.2.1 CM@Risk shall perform the Services required by, and in accordance with the Contract Documents and as outlined in the Exhibit A to the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CM@Risk shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.

17.2.2 As a participating member of the Project Team, CM@Risk shall provide to Town and Design Professional a written evaluation of Town's Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CM@Risk shall prepare a Baseline Cost Model that validates Town's budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost Model for variances. Town and Design Professional will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection

of the costs of the Project.

17.2.3 CM@Risk shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CM@Risk attendance at design or other meetings in which CM@Risk is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of CM@Risk Contract for default.

17.2.4 CM@Risk shall provide Pre-Construction Services, described herein, in a timely manner and consistent with the intent of the most current Drawings and Specifications. CM@Risk shall promptly notify Town in writing whenever CM@Risk determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

17.2.5 CM@Risk when requested by Town, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CM@Risk shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

17.2.6 Ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Town. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Town. The rights in this Section are exclusive to Town in perpetuity.

17.2.7 CM@Risk represents to Town in completing the Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CM@Risk does not assume any design responsibilities unless specifically called for in the scope of work, but CM@Risk shall be responsible for his errors, omissions or inconsistencies included in the Work.

17.3 Detailed Project Schedule

17.3.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CM@Risk shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path Method ("CPM") technique, unless required otherwise, in writing by Town. CM@Risk shall use scheduling software acceptable to Town to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate milestone dates for the phases once determined. As part of construction phase, Town may require CM@Risk to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/ anticipated number of personnel per day for each task. CM@Risk shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.

17.3.2 CM@Risk shall include and integrate in the Detailed Project Schedule the services

and activities required of Town, Design Professional and CM@Risk including all construction phase activities based on the input received from Town and the Design Professional. The Detailed Project Schedule shall define activities as determined by Town to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by Town. The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by Town, relationships between the activities, Town's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Completion.

17.3.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CM@Risk shall update and maintain a Detailed Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CM@Risk's plan for the performance of the construction phase Work. CM@Risk shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CM@Risk shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

17.3.3 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and Town and Design Professional approve, CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CM@Risk shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

17.3.4 Long Lead Time Items. As part of developing the Detailed Project Schedule, CM@Risk shall identify all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule.

17.3.5 Equipment Plan. Contractor shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CM@Risk or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to Town and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment, but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

17.4 Design Document Reviews

17.4.1 CM@Risk shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.

17.4.2 CM@Risk shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CM@Risk to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by Town and copies of the reports

will be provided to CM@Risk.

17.4.3 CM@Risk shall meet with the Project Team as required to review designs during their development. CM@Risk shall familiarize itself with the evolving documents through the various pre-construction phases. CM@Risk shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CM@Risk shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CM@Risk shall use established value analysis principles in recommending cost effective alternatives.

17.4.4 CM@Risk shall routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.

17.4.4.1 CM@Risk shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing Town systems and maintains traffic on adjacent roadways. CM@Risk shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed, and shall promptly inform the Project Team of any issues.

17.4.4.2 CM@Risk shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.

17.4.4.3 The results of the reviews shall be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. CM@Risk shall meet with Project Team to discuss any findings and review reports.

17.4.4.4 CM@Risk's reviews shall be from a contractor's perspective, and though it shall serve to eliminate/reduce the number of RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CM@Risk.

17.4.5 It is CM@Risk's responsibility to assist the Design Professional in ascertaining that, in CM@Risk's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations. If CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, sound engineering principle's rules and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those laws, statutes, ordinances, building codes, rules and regulations.

17.4.6 The Project Team shall routinely identify and evaluate using value analysis principles any alternate systems, approaches, design changes that have the potential to reduce Project costs

while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. Town, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CM@Risk suggested alternatives into the Drawings and Specifications. CM@Risk shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and Town's approval prior to the establishment of the GMP.

17.5 Baseline Cost Model, Detailed Cost Estimates, And Schedule Of Values

17.5.1 At the conclusion of the Master Planning and Programming, if required, CM@Risk will review all available information regarding the design and scope of the Project, using CM@Risk's experience in performing similar work, knowledge of similar projects and current and projected construction costs, and based upon that review shall develop a Baseline Cost Model for review by the Project Team and approval by Town. Once approved by Town, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout the pre-construction until a final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by Town prior to the start of construction. It is the responsibility of CM@Risk to ensure Town has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CM@Risk of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CM@Risk shall communicate to the Project Team any assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CM@Risk's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by Town. The Baseline Cost Model shall also include contingencies as agreed to by Town, which may include, but are not limited to: (a) a design contingency that takes into consideration the advancement of the then current design documents, (b) an escalation contingency from the time of the estimate through the scheduled buy out of the Project, (c) a construction contingency in the same percentage as the Contingency to be included in the GMP.

17.5.2 After receipt of the Design Professional's most current documents from certain specified pre-construction milestones, CM@Risk shall provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CM@Risk will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction milestone. The pre-construction milestones applicable to this paragraph are: Master Planning and Programming, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Drawings. If no consensus is reached, Town will make the final determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CM@Risk shall provide the requested information in a timely manner.

17.5.3 If at any point the Detailed Cost Estimate submitted to Town exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 17.5.2 above, CM@Risk shall make appropriate recommendations to Project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.

17.5.4 Near completion of the 50% Construction Drawings and included with the associated report, CM@Risk shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be based on Town standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CM@Risk's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents

17.5.5 CM@Risk is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: Town generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then between the Detailed Cost Estimates for each of the pre-construction milestones thereafter, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Documents, and the bid packages for all Phases.

17.5.6 Upon request by Town, CM@Risk shall submit to Town a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CM@Risk during the design and construction phases. In addition, if requested by Town and based on information provided by Town, CM@Risk shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist Town in the financing process.

17.5.7 Construction Water. CM@Risk shall estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided to Town.

17.6 Subcontractor And Major Supplier Selections

17.6.1 There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CM@Risk. In any case, CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of the Subcontractors/Suppliers, to the extent applicable. CM@Risk shall comply with its subcontractor selection plan submitted with its Statement of Qualifications.

17.6.2 Town may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CM@Risk can demonstrate it is in the best interest of the Project. All Work that is performed after such a qualifications-based selection for a price that is negotiated by CM@Risk will be billed in accordance with the GMP for actual costs and may be subject to audit by Town.

17.6.2.1 Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.

17.6.2.2 If a Subcontractor/Supplier selection plan was submitted and agreed to by Town, CM@Risk shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide Town with its review and recommendation.

17.6.2.3 CM@Risk must receive written Town approval for each selected Subcontractor(s) and Supplier(s).

17.6.2.4 CM@Risk shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

17.6.3 All Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to paragraph 17.5.2 above.

17.6.3.1 CM@Risk shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by Town and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CM@Risk may request approval by Town to submit less than three names. Without prior written notice to Town, no change in the recommended Subcontractors/Suppliers shall be allowed.

17.6.3.2 If Town objects to any nominated Subcontractor/Supplier or to any self-

performed Work for good reason, CM@Risk shall nominate a substitute Subcontractor/Supplier that is acceptable to Town.

17.6.3.3 CM@Risk shall distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

17.6.3.4 If CM@Risk desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and Town concurs that it is necessary in order to insure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CM@Risk may be authorized to self-perform Work without bidding or re-bidding the Work. When CM@Risk self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by Town.

17.6.3.5 CM@Risk shall receive, open, record and evaluate the bids; provided, however, that if CM@Risk or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids shall be received, opened, recorded and evaluated by Project Manager instead of CM@Risk. Bids for each category of Work shall be opened and recorded at a pre-determined time. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids shall be done with Project Manager in attendance to observe and witness the process. CM@Risk shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

17.6.4 CM@Risk shall be required to prepare two different reports on the subcontracting process.

17.6.4.1 Within fifteen days after each major Subcontractor/Supplier bid opening process; CM@Risk shall prepare a report for Town's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CM@Risk intends to self-perform, if any.

17.6.4.2 Upon completion of the Subcontractor/Supplier bidding process, CM@Risk shall submit a summary report to Town of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

17.6.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.

17.6.6 If after receipt of sub-bids or after award of Subcontractors and Suppliers, Town objects to any nominated Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CM@Risk shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by Town, CM@Risk's proposed GMP/Price for the Work or portion thereof may be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

17.7 Fixed Price/GMP Proposal

17.7.1 The Town may require and/or accept either a Fixed Price Proposal or a GMP Proposal, as set forth in the solicitation and/or as agreed to by the Town.

17.7.1.1 Fixed Price Proposal. When the Proposal submitted by the CM@Risk is a Fixed Price, that Fixed Price will be the Contract Price.

17.7.1.2 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work (as set forth in Sections 15.2 and 15.3 above) in each phase of the Work that is being proposed plus the current estimate for all other Work. Town will not approve the GMP for the phase of work without a total estimate for the complete Project. Town may request a GMP Proposal for all or any portion of the Project and at any time during the pre-construction. Any GMP Proposals submitted by CM@Risk shall be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

17.7.2 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CM@Risk Fee, General Conditions Cost and Contingency. CM@Risk guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CM@Risk shall be responsible for any costs or expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.

17.7.3 CM@Risk shall prepare its Proposal in accordance with Town's request for Proposal requirements based on the most current completed Drawings and Specifications at that time, which unless otherwise directed by Town in writing, shall be at 100% construction drawings. CM@Risk shall mark the face of each document of each set upon which its Proposal is based. These documents shall be identified as the Proposal Plans and Specifications. CM@Risk shall send one set of those documents to the Project Manager, keep one set and return a third set to the Design Professional.

17.7.4 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any Proposal(s), all of which shall reflect the Proposal Plans and Specifications the Detailed Project Schedule shall be shown in relationship to the total Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Sections 17.3.1 through 17.3.5.

17.7.5 Proposal(s) Review and Approval.

17.7.5.1 CM@Risk shall meet with the Project Team to review the Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CM@Risk shall make adjustments as necessary to the GMP Proposal.

17.7.5.2 If during the review and negotiation of Proposals design changes are required, Town may authorize and cause the Design Professional to revise the Proposal Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Proposal Plans and Specifications will be furnished to CM@Risk. CM@Risk shall promptly notify the Project Team in writing if any such revised Proposal Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

17.7.6 All portions of or items comprising the Proposal are subject to audit by Town, as deemed appropriate by Town, including, without limitation, any based upon unit prices or Work to be self-performed by CM@Risk, or its affiliates.

17.7.7 GMP Proposals shall be Open Book.

17.8 Payment Procedure For Pre-Construction Services

17.8.1 Requests for monthly payments by CM@Risk for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their

Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

17.8.2 In no event will Town pay more than seventy-five percent (75%) of the Contract Price until final acceptance of the all Pre-Construction Services, and award of the final approved Construction Services Contract for the entire Project by Town Council. If CM@Risk does not prepare a GMP Proposal that is acceptable to Town, or the GMP Proposal exceeds the Town's Construction Budget, then CM@Risk understands and acknowledges that it will forfeit any right to receive the 25% of the Contract Price being retained by Town.

17.8.3 CM@Risk agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of Town during the progress of any portion of the Pre-Construction Services specified in this Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting CM@Risk to proceed to complete any such Services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of Town of any of their respective legal rights herein.

17.8.4 No compensation to CM@Risk shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

17.8.5 If any service(s) executed by CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CM@Risk, CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

17.9 Additional Pre-Construction Services

17.9.1 Additional services which are outside the scope of the services required under the Contract Documents applicable to a particular project shall not be performed by CM@Risk without prior written authorization from Town. Additional services, when authorized by an executed written Change Order under Section 9 of these General Conditions, shall be compensated by a fee mutually agreed upon in such written Change Order between Town and CM@Risk.

17.9.2 No claim for additional services, extra work done or materials furnished by CM@Risk shall be allowed by Town except as provided herein, nor shall CM@Risk provide any additional services, do any work, or furnish any material(s) not covered by the contract governing a particular project unless such work or material is first authorized in writing by the Project Manager. Work or material(s) furnished by CM@Risk without such prior written authorization shall be at CM@Risk's sole jeopardy, cost, and expense, and CM@Risk hereby agrees that without prior written authorization no claim for compensation for such services, work or materials furnished shall be made, and Town shall not be responsible for such costs.

17.9.3 No Work (as defined by Section 1 of these General Conditions) may be performed under any contract, without prior written approval by the Town. As an example, all procurement of long lead time items that must be procured to support the construction schedule or site investigative Work necessary to complete Pre-Construction Services, if done by the CM@Risk, will be performed only after a Proposal for the Work has been approved and accepted in writing by Town and all such Work shall be done only under an executed Contract for Construction Services, or pursuant to a prior written direction from Town to engage in such procurement.

SECTION 18 – PROVISIONS APPLICABLE SOLELY TO DESIGN PROFESSIONAL AND CONSULTANT CONTRACTS AND DESIGN SERVICES

Note: The provisions in this Section 18 only apply to Contracts or Change Orders involving Design Professionals and/or Design Services.

18.1 ADDITIONAL DEFINITIONS

The definitions set forth in Section 2 apply to Contracts or Change Orders involving Design Professionals, Consultants and/or Design Services, together with the additional definitions set forth below.

Deliverables – The items, including without limitation, physical and electronic documents, models, drawings, details, specifications, certifications, certificates, licenses, policies, studies, data, surveys, files, record documents/as-builts, manuals, instructions, software, applications, and/or other things which Design Professional is required to provide to TOWN or are necessary to fully and timely perform the Services and provide the full benefits thereof to TOWN. The Deliverables will comply with all Legal Laws, Regulations, or Legal Requirements (including without limitation the Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements).

Master Contract – The written agreement executed between TOWN and Design Professional, including all of the Contract Documents specified therein.

Project Order – A written instrument issued after execution of the Master Contract signed by TOWN and Design Professional, stating their agreement upon the terms under which Design Professional shall provide Design Services for a specific Project or group of Projects as set forth in the Project Order.

18.2 STANDARD OF CARE

18.2.1 The Design Services or Services include any and all services reasonably contemplated, normally included, and necessary to complete the Scope of Services set forth in each Project Order in a good and professional manner with due diligence and in a timely manner. Design Professional shall perform the Services required by, and as outlined in each Project Order to the satisfaction of the Project Manager designated by TOWN in the Project Order (“Project Manager”), exercising the degree of care, skill, diligence and judgment that a design professional experienced in the performance of such Services for design, construction, and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout Arizona, would exercise at such time, under similar conditions. Design Professional shall, at all times, perform the Services consistent with sound and generally accepted engineering principles and design practices.

18.2.2 Team Approach. The Design Services include facilitating TOWN's intension to follow a Team Approach as defined in Section 2 above. The Team Approach will include, but not be limited to, Design Professional's attendance and full participation in all Project Team meetings and work sessions required under the Contract Documents or by TOWN, including without limitation those required under Section 18.3.1.5 below. See also, for example only and not as a limitation, Sections 4.13, 17.2.2.

18.2.3 Coordination. Design Professional shall be responsible for coordinating the Services, the Deliverables, and all designs, drawings, and/or specifications developed in relation thereto, with the TOWN Contracts Department and/or any other TOWN departments as necessary, other design professionals, and all contractors involved in the Project, as well as any other designs, drawings, and/or specifications for the Project.

18.2.4 Cooperation. Design Professional shall also cooperate with TOWN in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity, regulatory agency, and/or private utility company, including preparing any required reports, applications and/or submittals, and participation in any hearings or meetings.

18.2.5 Quality/Special Features. Design Professional is responsible, to the extent necessary to perform the Services and at no additional cost to TOWN, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Services, the Project, the Project site, and TOWN. Unless provided for in the Project Order or otherwise included within the Scope of Services under a Project Order, Design Professional shall not be required to undertake or perform a geotechnical investigation, materials sampling or testing, construction cost estimating, or other special investigation of existing conditions unless the same is included in the Scope of Services. TOWN' determination as to the level of quality required, and on all aesthetic issues, shall be final and binding.

18.3 SERVICES

18.3.1 Design Professional shall, without limitation provide the following Services:

18.3.1.1 Prepare the Deliverables and provide the Services as more specifically described in each Design Professional Contract or Project Order.

18.3.1.2 If required by TOWN and/or the Contract, prepare the Deliverables and provide the Services utilizing a BIM system as defined in Section 2 above.

18.3.1.3 If requested in writing by TOWN or included in the Scope of Services for the Project Order, prepare and submit a detailed estimate of the total cost of the Project through completion in such detail and format as required by TOWN.

18.3.1.4 Follow and comply with the [Arizona Utility Coordinating Committee \(AUCC\) Public Improvement Project Guide](#) as directed by TOWN.

18.3.1.5 Attend Project Team meetings, Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. Design Professional attendance at design or other meetings in which Design Professional is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of this Master Contract for default. When requested by TOWN, Design Professional shall attend, make presentations at, and participate as may be appropriate in, public agency and or community meetings relevant to the Project. Design Professional shall provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.

18.3.1.6 For submittal guidelines, Design Professional shall categorize scope as outlined in Section 4.7 above.

18.3.2 General Conditions And Requirements.

18.3.2.1 Design Professional shall perform the Services required by, and in accordance with this Master Contract and as outlined in the applicable Project Order to the satisfaction of the Project Manager, in full compliance with the General Conditions.

18.3.2.2 In performance of the Services and preparing the Deliverables, the Design Professional shall fully comply with all applicable Laws, Regulations, or Legal Requirements applicable to TOWN, the particular Project and the Master Contract, including, without limitations those set forth on in Appendices to the General Conditions and the Exhibit C attached to the applicable Project Order, including without limitation, in full comply with the Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements, including without limitation compliance with the 2010 regulations governing implementation of the ADA.

18.3.3 Design Within Funding Limitations. Design Professional shall accomplish the Services so that the Construction Contract for the Project may be bid and awarded by TOWN at a total Construction

Contract Price that does not exceed the Estimated Construction Contract Price plus ten percent (10%), as set forth below:

- 18.3.3.1 The Estimated Construction Contract Price for the Project shall be set forth in each Project Order.
- 18.3.3.2 If the lowest responsive and responsible bid or proposal Construction Contract Price exceeds the Estimated Construction Contract Price, Design Professional shall perform such redesign and other Services as are necessary to permit the rebidding and award of the construction contract for the Project within the Estimated Construction Contract Price (collectively the "Redesign Services"). The Redesign Services shall be performed at no additional cost to TOWN, unless TOWN and Design Professional agree that the cause of the Estimated Construction Contract Price being exceeded are beyond the reasonable control of Design Professional and could not have been anticipated by Design Professional (such as unanticipated material changes in the scope of the Project by TOWN; unknown, unusual and not reasonably anticipated material existing conditions; or significant and unforeseen increases in construction and/or material costs.
- 18.3.3.3 Design Professional shall promptly (and in no event later than finalization and publication of the request for bids, request for proposals, or request for statements of qualifications, for the construction of the Project) advise TOWN' Project Manager in writing as soon as Design Professional believes, or should realize, that the design for the Project will likely cause the Estimated Construction Contract Price to be exceeded. Failure to give timely notice pursuant to this subsection will constitute a waiver of Design Professional's right to assert a claim for additional compensation for any Redesign Services.
- 18.3.4 Service Phases.As set forth on a Project Order the Design Professional may be required to provide some or all of the following Services generally described as:
- .1 Schematic Design Phase Services;
 - .2 Design Development Phase Services;
 - .3 Construction Documents Phase Services;
 - .4 Procurement Phase Services; and/or
 - .5 Construction Phase Services.

Design Professional shall not commence the next Phase of Services until TOWN has accepted the preceding Phase of Services without the prior written authorization by TOWN to commence that Phase.

18.3.4.1 Schematic Design Phase Services (if applicable).

- 18.3.4.1.1 Design Professional shall review the program and other information furnished by TOWN, and shall Laws, Regulations, or Legal Requirements applicable to the Design Professional's services.
- 18.3.4.1.2 Design Professional shall prepare a preliminary evaluation of TOWN' program, schedule, budget for the Cost of the Work, Project Site, and the proposed procurement or delivery method and other Project information, each in terms of the other, to ascertain the requirements of the Project. Design Professional shall notify TOWN of: (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.
- 18.3.4.1.3 Design Professional shall present its preliminary evaluation to TOWN and shall discuss with TOWN alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Design Professional shall reach an understanding with TOWN regarding the requirements of the Project.
- 18.3.4.1.4 Based on the Project's requirements agreed upon with TOWN, the Design Professional shall prepare and present for TOWN' s approval a preliminary design illustrating the scale and relationship of the Project components.

- 18.3.4.1.5 Based on TOWN's approval of the preliminary design, the Design Professional shall prepare Schematic Design Documents for TOWN's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- 18.3.4.1.6 Design Professional shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with TOWN's program, schedule and budget for the Cost of the Work. The TOWN may obtain other environmentally responsible design services under Article 4.
- 18.3.4.1.7 Design Professional shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with TOWN's program, schedule and budget for the Cost of the Work.
- 18.3.4.1.8 Design Professional shall submit to TOWN an estimate of the Cost of the Work prepared in accordance with Section 18.3.1.3 above.
- 18.3.4.1.9 Design Professional shall submit the Schematic Design Documents to TOWN, and request TOWN's written approval.
- 18.3.4.2 Design Development Phase Services (if applicable).
- 18.3.4.2.1 Based on TOWN's approval of the Schematic Design Documents (if applicable), and on TOWN's Written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design Professional shall prepare Design Development Documents for TOWN's written approval. Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.
- 18.3.4.2.2 Design Professional shall update the estimate of the Cost of the Work.
- 18.3.4.2 Design Professional shall submit the Design Development documents to TOWN, advise TOWN of any adjustments to the estimate of the Cost of the Work, and request TOWN' s written approval.
- 18.3.4.3 Construction Documents Phase Services (if applicable).
- 18.3.4.3.1 Based on TOWN's written approval of the Design Development Documents, and on TOWN's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design Professional shall prepare Construction Documents for TOWN's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The TOWN and Design Professional acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Design Professional shall review in accordance with Section 3.6.4.
- 18.3.4.3.2 Design Professional shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

18.3.4.3.3 During the development of the Construction Documents, the Design Professional shall assist TOWN in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between TOWN and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). Design Professional shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

18.3.4.3.4 Design Professional shall update the estimate for the Cost of the Work.

18.3.4.3.5 Design Professional shall submit the Construction Documents to TOWN, advise TOWN of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request TOWN' s written approval.

18.3.4.4 Procurement Phase Services (if applicable).

18.3.4.4.1 If requested by TOWN, Design Professional shall assist TOWN in bidding the Project by:

- .1 Assisting in the preparation of the solicitation documents;
- .2 Participating in a pre-response conference for prospective bidders;
- .3 Assisting in preparing responses to questions from prospective respondents and providing clarifications and interpretations of the solicitation documents in the form of addenda; and
- .4 Participating in the evaluation of responses, all, as directed by TOWN.

18.3.4.4.2 If requested by TOWN, Design Professional shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

18.3.1.6 Construction Phase Services (if applicable).

18.3.4.5.1 If the Services include Construction Phase Services and/or contract administration during the construction of the Project, provide, at no additional cost to TOWN, such Services, including without limitation inspections, attending meetings, responses to requests for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, including supporting the implementation, execution and acceptance of the Contractor's or CMAR's commissioning work, and/or as may be reasonably requested by TOWN. All construction phase Services provided by Design Professional shall comply and be consistent with the requirements of the General Conditions applicable to Design Professional, the Contractors involved in the Project, and TOWN.

18.3.4.5.2 Evaluation of the Work. Design Professional shall visit the Site at intervals appropriate to the stage of construction, or as otherwise required by TOWN, to become familiar with the progress and quality of the portion of the Work completed, and to determine, if the Work observed is being performed in a manner indicating that the Work is being constructed in accordance with the Contract Documents. Design Professional shall keep TOWN fully informed about the progress and quality of the portion of the Work completed, and report to TOWN: (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor; and (2) defects and deficiencies observed in the Work. Unless otherwise specified in a Project Order, Design Professional shall conduct a minimum of one (1) site visit per month in accordance with this Section is included in Design Professionals basic services under the Contract.

18.3.4.5.3 Certificates for Payment. Design Professional shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Design Professional's certification for payment shall constitute a representation to TOWN, based on Design Professional's evaluation of the Work as provided in Section 18.3.4.5.2 above and on the data comprising the Contractor's Application for Payment, that, to the best of Design Professional's knowledge, information and

belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject: (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) to results of subsequent tests and inspections; (3) to correction of minor deviations from the Contract Documents prior to completion; and (4) to specific qualifications expressed by Design Professional. Design Professional shall maintain a written record of the Applications and Certificates for Payment, in the form required by Owner

18.3.4.5.3 Payment Evaluation. Design Professional shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Design Professional's certification for payment shall constitute a representation to TOWN, based on Design Professional's evaluation of the Work as provided in Section 318.3.4.5.2 above and on the data comprising the Contractor's Application for Payment, that, to the best of Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject: (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) to results of subsequent tests and inspections; (3) to correction of minor deviations from the Contract Documents prior to completion; and (4) to specific qualifications expressed in writing by Design Professional.

18.3.4.5.4 Submittals.

18.3.4.5.4.1 Design Professional shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. Design Professional's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in Design Professional's professional judgment to permit adequate review and in compliance with all applicable time limitations and the Project Schedule. TOWN shall have the right to input on and/or approve or reject any submittals TOWN chooses.

18.3.4.5.4.2 In accordance with Design Professional-approved submittal schedule, Design Professional shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Professional, of any construction means, methods, techniques, sequences or procedures. Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

18.3.4.5.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, Design Professional shall specify the appropriate performance and design criteria that such services must satisfy. Design Professional shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to Design Professional. Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

18.3.4.5.4.4 Design Professional shall review and respond to requests for information about the Contract Documents. Design Professional shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. Design Professional's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness and

in compliance with all applicable time limitations and the Project Schedule. If appropriate, Design Professional shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

- 18.3.4.5.4.5 Design Professional shall maintain a written record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents, in the form reasonably required by TOWN and/or the Construction Lender and provided to Design Professional.
- 18.3.4.5.5 Changes in the Work. Subject to the provisions the provisions of the Contract Documents related to Changes and Change Orders, upon TOWN's request, Design Professional shall prepare Change Orders and Construction Change Directives for TOWN's approval and execution in accordance with the Contract Documents. Design Professional shall maintain written records relative to changes in the Work in sufficient detail to identify the changes and their impact on the Project, TOWN's budget, and/or the Project Schedule.
- 18.3.4.5.6 Project Completion. Design Professional shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to TOWN, for TOWN's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Design Professional's inspections shall be conducted the Project Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- 18.3.4.5.7 Record Documents. If requested by TOWN, provide TOWN with full "Record" and/or "As-Built" drawings at the completion of the Project, in such form and detail as TOWN may require.
- 18.3.4.5.8 One (1) Year Inspection. Upon request of TOWN, and prior to the expiration of one (1) year from the date of Substantial Completion, Design Professional shall, without additional compensation, participate as a member of the Project Team in the One (1) Year Inspection as set forth in Section 4.9.12 above. Design Professional is primarily responsible for observation, evaluation of the conditions observed during, following up on any items identified and/or needing additional follow-up, and documenting the results of the One (1) Year Inspection.
- 18.3.9 Additional Services.
 - 18.3.9.1 Additional Services which are outside the scope of the Services required under the Contract Documents shall not be performed by Design Professional without prior written authorization from TOWN. Additional Services, when authorized by an executed written Change Order under Section 9 of the General Conditions, shall be compensated for by a fee mutually agreed upon in such written Change Order between TOWN and Design Professional.
 - 18.3.9.2 No claim for additional Services shall be allowed by TOWN except as provided herein. Services provided by Design Professional without prior written authorization from TOWN shall be at Design Professional's sole jeopardy, cost, and expense, and Design Professional hereby agrees that without prior written authorization no claim for compensation for such Services shall be made, and TOWN shall not be responsible for such costs. Nor shall TOWN pay for any costs not expressly designated reimbursable in the applicable Project Order or the written authorization for the additional Services.
- 18.3.10 Corrections. Design Professional shall promptly provide, at no additional cost to TOWN, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawings provided by Design Professional.

18.3.11 Key Personnel. Design Professional shall perform the Services under this Master Contract using only those firms, team members and individuals designated by Design Professional consistent with Design Professional's SOQ, agreed to in the applicable Project Order, and/or as otherwise approved by TOWN in accordance with the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager. Any substituted personnel shall have the same or higher qualifications as the personnel being replaced.

18.3.12 Continuation of Obligations. The completion, quality and accuracy of the Services and the Deliverables provided to TOWN under the Services directly impact Design Professional's performance of its obligations under the Contract Documents, and Design Professional's obligations and duties continue throughout the entire Project. Therefore, all of Design Professional's obligations, duties, and warranties in relation to the Services and deliverables survive and apply with equal force to the Construction Phase. Any breach of any of Design Professional's duties, obligations, or warranties under the Services shall likewise be considered a breach of the Contract.

18.4 USE AND OWNERSHIP OF DOCUMENTS

Upon execution of this Master Contract, Design Professional and all design professionals and sub-consultants working under or for Design Professional, hereby grant to TOWN an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Design Professional pursuant to this Master Contract ("the Instruments of Service"), for the purposes of construction and completion of the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Design Professional's Instruments of Service), or for construction of the same type of Project at other locations, by TOWN and others retained by TOWN for such purposes. This license shall extend to those parties retained by TOWN for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. Design Professional shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of this Master Contract and/or of any project-specific Contract, and the completion of the Project. Upon completion of the Project and/or termination of the Contract for any reason, Design Professional shall deliver to TOWN full sized and usable copies (including any and all CAD, BIM, and/or computer files) of all data, documents, designs, drawings and specifications generated by Design Professional, including those generated by any suppliers, subcontractors or sub-consultants. TOWN shall retain all rights to and ownership of all documents, designs, drawings, specifications, and/or styles provided to Design Professional by TOWN in relation to the Contract and the Project, and Design Professional shall not utilize any such material in relation to any other work or project. Design Professional may re-use any standard specifications and details included in the Instruments of Service that were not developed by Design Professional specifically for the Project.

18.5 INFORMATION PROVIDED BY TOWN

TOWN shall provide to Design Professional information regarding requirements for the Project, including relevant budget information, Project schedules, identities of Project participants, and related designs, drawings, and specifications. Design Professional shall be entitled to rely on such information furnished by TOWN, provided that Design Professional shall promptly notify TOWN, in writing, of any information that Design Professional believes is missing, unclear or insufficient for the successful completion of the Project and the Services.

18.6. TIME

18.6.1 Time is of the Essence. Time is of the essence of this Master Contract and each Project Order. Design Professional shall complete all Services within the schedule set forth in the Project Order, and Design Professional shall strictly comply with said schedule and failure to do so shall be a material breach of the Contract.

- 18.6.2 Response by Design Professional. Design Professional shall promptly respond to any requests for approvals, information or clarification within sufficient time (and in no event more than five (5) calendar days after receiving the request) to allow TOWN to timely respond to the contractor(s) and/or other parties involved in the Project, and so as to not delay the Project.
- 18.6.3 Schedule. If requested by TOWN, Design Professional shall prepare and present to TOWN a Schedule in a form and in such detail as required by TOWN and in accordance with the requirements set forth in the Project Order.
- 18.6.4 Long Lead Time Items. If within the general scope of the Services, Design Professional shall identify all long lead time designs, studies, Deliverables, materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team.

18.7 CONTRACT PRICE

- 18.7.1 Fee. In exchange for the Design Professional's full, timely and acceptable performance of the Services under the Project Order, and subject to all terms of the Master Contract, TOWN will pay Design Professional for the Services in the amounts, on the basis, and in the manner set forth in each Project Order.
- 18.7.2 Reimbursable Expenses. No reimbursable expenses or costs of any kind shall be paid by TOWN unless expressly approved by TOWN in writing before they are incurred. Any approved reimbursable expenses will be paid at the actual cost without any markup. No costs will be paid except those specifically set forth in the Project Order, reimbursement for any costs is subject to Section 15.3 of the General Conditions and in no event shall payment be made for items which are designated as "Cost Not To Be Reimbursed" in Section 15.3.2 of the General Conditions.
- 18.7.3 Taxes. Design Professional shall be solely responsible for any and all tax obligations which may arise out of or result from Design Professional's performance of the Contract. TOWN shall have no obligation to pay any amounts for taxes, of any type, incurred by Design Professional.

18.8 PAYMENT FOR SERVICES

- 18.8.1 Design Documents. For Services involving the preparation of any design documents:
- 18.8.1.1 Prior to approval of the preliminary documents (30% plans), the billed amount shall not exceed 40% of the Contract Price.
- 18.8.1.2 Prior to approval of the final design documents deliverable under the Services, the billed amount shall not exceed 90% of the Contract Price.
- 18.8.2 If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed 90% of the Contract Price prior to submittal of the final report deliverables.
- 18.8.3 Additional services included in the Services, such as bidding assistance, shop drawing review, contract documents interpretation, etc., shall be paid for based on the actual completed services.
- 18.8.4 Payment Documentation. As a necessary precondition to any payment under the Contract, TOWN may require Design Professional to provide such certifications; lien waivers (in statutory form); and proofs of performance, costs and/or percentage of completion as may be reasonably required by TOWN, to ensure that payment is then due and owing pursuant to the payment terms set forth in this Master Contract and/or any Project Order.
- 18.8.5 Monthly Reports. If required by TOWN, monthly progress reports by the Design Professional shall include a summary of costs billed by Service category and task and shall be formatted to permit

comparison of actual-to-proposed costs and a breakdown of costs incurred by each subconsultant.

18.8.6 Payment Not Acceptance. Payment by TOWN does not constitute acceptance by TOWN of the Services or Design Professional's performance, nor does payment constitute a waiver of any rights or claims by TOWN.

18.9 PERFORMANCE TO CONTINUE DURING DISPUTES

If a dispute over payment arises, and during all claims resolution proceedings, including mediation and arbitration, Design Professional shall continue to fully render the Services in a timely manner.

SECTION 19 – APPENDICES

Appendix 1 – Policies/Requirements Applicable to TOWN Projects

Appendix 2 – Federal Requirements

Appendix 3 – Disadvantaged Business Owner Overall Goal

Appendix 4 – Weather

Appendix 5 – Federal Bond Requirements

Appendix 6 – Minimum Test Requirements

Appendix 7 – Safety and Security Plan

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