Staff Summary Report

Tempe

Council Meeting Date: 07/22/08 **Agenda Item Number:** _____

SUBJECT: Request approval of a Construction Manager at Risk Design Phase Contract with Valley Rain Construction Corporation for Rio East Linear Park on the south side of Tempe Town Lake between Scottsdale Road and the ASU Karsten Golf Course.

DOCUMENT NAME: 20080722PWDR11 **BRIDGES (1801) PROJECT NO. 6506011**

SUPPORTING DOCS: Yes.

COMMENTS: Total cost for this contract is $70,926.

PREPARED BY: Donna Rygiel, Engineering Contract Administrator (x8520)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (x8814)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 6506011.

RECOMMENDATION: Approve contract and authorize the Mayor to execute all necessary documents.

ADDITIONAL INFO: This project includes construction of a multi-use path and installation of landscaping along Tempe Town Lake between Scottsdale Road and the western property line of the ASU Karsten Golf Course. Valley Rain Construction Corporation will be working closely with the architect for this project and reviewing design documents to determine constructability within the cost model.

Staff negotiated this contract and considers it reasonable for the scope of services. Valley Rain Construction Corporation was selected by a review committee as the most qualified firm for these services using a qualification based process set forth in Title 34 of the Arizona Revised Statutes.

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES

THIS CONTRACT is made and entered into this 22nd day of July, 2008, by and between the City of Tempe, an Arizona municipal corporation, organized and existing under and by virtue of the law of the State of Arizona ("City") and VALLEY RAIN CONSTRUCTION CORPORATION, an Arizona corporation, ("Construction Manager at Risk" or "CM@Risk").

The City and CM@Risk agree as follows:

The City engages the CM@Risk to perform professional construction management design phase services for a project known and described as Rio East Linear Park, Project No. 6506011 ("Project").

1. TERMS AND DEFINITIONS

1.1. **"Addendum"** means a document issued by the City during the bidding period that modifies or supersedes portions of the Contract as to additional specifications, forms or other information.

1.2. **"Alternate Systems Evaluations"** means alternatives for design, means and methods or other scope considerations that are evaluated by the City using value engineering principles for a potential reduction of construction costs of a quality and functional Project per City requirements.

1.3. **"Amendment"** means a written modification of the terms and conditions of this Contract signed by the parties of the contract.

1.4. **"Business Day"** means any calendar day except Saturdays, Sundays and holidays observed by the City.

1.5. **"Calendar Day"** means every day shown on the calendar including Saturdays, Sundays and holidays.

1.6. **"Construction Fee"** means the CM@Risk's total administrative costs, including home office overhead if any, and profit, whether at the CM@Risk's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are provided in the General Conditions sections of the Contract, construction phase, set forth herein.

1.7. **"CM@Risk" ("Construction Manager at Risk" or "Contractor")** means the person, firm, corporation or other approved legal entity with whom the City has contracted with to provide design services or construction services.

1.8. **"Contingency"** means a fund to cover cost growth during the project used at the discretion of the CM@Risk for charges in material costs or availability, resource availability, production capacity or unforeseen project circumstances. The amount of the CM@Risk's contingency will be negotiated as a separate line item in each GMP Proposal.

1.9. **"City's Contingency"** means a fund to cover cost growth during the project used at the sole discretion of the City for anticipated costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen site conditions. The amount of the City's contingency will be set solely by the City in addition to the project costs included in the CM@Risk's GMP Proposal.

1.10. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by the City and CM@Risk covering the design phase of the Project. The Contract collectively represents the entire agreement between the City and the CM@Risk, and which supersedes any prior negotiations, representations or agreements, either written or oral.

1.11. **"Contract Time(s)"** means the number of days or dates related to the construction phase, as stated in construction documents that apply to achievement of substantial completion and/or full completion of the Work.

1.12. **"Cost of the Work"** means the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed Work, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's construction fee, general conditions fee, taxes, bonds, or insurance costs.

1.13. **"Cost Model"** means a breakdown of the scope of the Project that is initially developed by the CM@Risk during the conceptual design phase and based on information from the Project Team and the CM@Risk's records of similar projects. The model will evolve as the design progresses and be maintained by the CM@Risk throughout the design phase and will include any assumptions and clarifications made by the CM@Risk. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The Cost Model is subject to approval by the City in its sole discretion.

1.14. **"Day(s)"** means calendar day(s) unless otherwise expressly stated herein.

1.15. **"Deliverables"** means the Work products prepared by the CM@Risk in performing the scope of Work described in the Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the Design Phase include but are not limited to: construction management plan, Cost Model, Project schedule of values, Alternative System Evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

1.16. **"Design Engineer ("Design Professional")"** means the person, firm or corporation having a contract with the City to furnish design services for this Project.

1.17. **"Drawings"** means documents which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Engineer and the City. Drawings include such documents that have reached a sufficient stage of completion and are released by the Engineer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates. (E.g., conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%, but excluding Shop Drawings and those marked, "NOT FOR CONSTRUCTION").

1.18. **"Effective Date of this Contract"** means the date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the parties signs this Contract.

1.19. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of the CM@Risk during the construction phase, including but not limited to: payroll costs for the project manager or construction manager (but not both) for Work conducted at the Site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the Site; workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up); 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 consultants not in the direct employ of the CM@Risk or subcontractors; and fees for permits and licenses.

1.20. **"Guaranteed Maximum Price (GMP) Proposal"** means the offer of a proposal detailing the qualifications, assumptions, exclusions, value engineering and any and all other requirements set forth in the scope of Work for the construction phase.

1.21. **"Laws and Regulations; Laws or Regulations"** means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all federal, state,

and local governmental bodies, agencies, authorities and courts having jurisdiction over the subject Project, Site, of this Contract, and/or any Work.

1.22. **"Notice of Award"** means the written notice by the City to the CM@Risk stating that upon compliance by the CM@Risk with the conditions precedent enumerated therein, within the time specified, the City anticipates the execution of this Contract.

1.23. **"Notice to Proceed"** means written notification from the City to the CM@Risk establishing the date on which performance of the CM@Risk's obligations under this Contract shall begin.

1.24. **"Progress Payment Application"** means the form accepted by the City and used by the CM@Risk in requesting progress payments or final payment for Work performed under this Contract, which includes supporting documentation as required by the Contract or the City.

1.25. **"Project"** means the total design and construction of improvements, or services and/or Work to be performed by the CM@Risk Contractor pursuant to an express fixed-price Job Order.

1.26. **"Project Team"** means a construction services unit consisting of a Design Professional, CM@Risk, the City design project manager, construction project manager, Construction Manager Professional and other persons who are responsible for making decisions regarding the Project, as approved by the City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by the City.

1.27. **"Samples"** means physical examples of materials, equipment or workmanship representative of a part of the construction phase establishing the standards by which that portion of the construction phase Work will be evaluated.

1.28. **"Shop Drawings"** means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@Risk and submitted by the CM@Risk to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

1.29. **"Specifications"** means the technical specifications for the construction phase of this Project consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and administrative details applicable thereto.

1.30. **"Subcontractor"** means an individual, firm, entity or corporation other than CM@Risk's employees, having a contract with the CM@Risk to undertake to perform a part or portion of the Design Phase services or construction phase Work

at the Site for which the CM@Risk is responsible. Subcontractors shall be selected through the Subcontractor bid process described in Section 14 of this Contract.

1.31. **"Substantial Completion"** means when the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (a) approval by City Fire Marshall and local authorities including issuance of the certificate of occupancy; (b) elevator permit; (c) all systems in place, functional, and displayed to the City or its representative; (d) all materials and equipment installed; (e) all systems reviewed and accepted by the City; (f) draft operation and maintenance manuals and record documents reviewed and accepted by the City; (g) City operation and maintenance training completed; (h) heating, ventilation and air conditioning test and balance completed (provide minimum thirty (30) days prior to projected substantial completion); (i) landscaping and site work; and (j) final cleaning.

1.32. **"Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment.

1.33. **"Total Float"** means number of calendar days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project schedule, as determined by the City.

1.34. **"Work"** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction, design and/or repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

2. SERVICES OF THE CM@RISK

2.1. The CM@Risk shall perform the following professional construction management services required by and in accordance with this Contract and in accordance with the degree of care, skill and judgement that a professional construction manager in Arizona would exercise under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and design services practices.

2.2. The CM@Risk has assigned Dan Kuwitzky as the Project Manager for this Contract. Prior written approval by the City is required in the event that CM@Risk requests a change of Project Manager. The CM@Risk shall submit the qualifications of any proposed substituted personnel to the City for approval.

2.3. The CM@Risk shall furnish construction administration services as described in Exhibit "A." The design phase services being provided under this Contract will not alter any real property owned by the City.

3. TERM

The CM@Risk shall complete all design phase services per the terms of the Contract, free and clear from any and all claims, liens and changes whatsoever, within one hundred twenty (120) calendar days of the "Notice to Proceed" date by the City. In the event delays are experienced beyond the control of the CM@Risk, the schedule may be revised by the City in its sole discretion.

4. WARRANTY

CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Specifications and Contract Documents, of good quality, in conformance with the Specifications and the other CM@Risk Contract Documents and free of defects in materials and workmanship. CM@Risk's warranty obligation excludes defects caused by abuse, alterations or unreasonable failure to maintain the construction by persons other than CM@Risk, subcontractors or others under CM@Risk's control. Nothing in this warranty shall limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section 4 or the other Contract Documents. CM@Risk will provide City with all manufacturers' warranties and operation and maintenance manuals upon substantial completion of the Work. CM@Risk's warranty shall be for two (2) years and will commence for all portions of the Work upon Substantial Completion of the entire Work as determined by the City under the Contract Documents. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

5. CORRECTION OF DEFECTIVE WORK

5.1. If any portion of the Work is covered over contrary to the request of the City or as required by the Contract Documents or the applicable building standards, it must be uncovered for observation at the CM@Risk's expense if requested by City in writing.

5.2. If any portion of the Work, other than those portions required to be inspected or observed by the City or others, prior to being covered, has been covered over, City may request that it be uncovered for inspection or observation, as applicable. If such portion is found to be in accordance with the requirements of the Specifications and other Contract Documents, the cost of uncovering it shall be charged to the City as a Change Order. If such portion is found not to be in accordance with the requirements of the Specifications and other CM@Risk Contract Documents, the CM@Risk shall bear such costs.

5.3. CM@Risk agrees to promptly correct any Work that is found not to be in conformance with the Specifications and other CM@Risk Contract Documents, whether previously inspected or observed by the City's representatives or not unless a specific written waiver of such nonconformance has been provided to the CM@Risk by the City. This obligation shall continue for a period of two (2) years from the date of Substantial Completion of the entire Work. Nothing in this Section 5.3 shall waive any rights that City may have under Arizona law.

5.4. CM@Risk, upon receipt of written notice from City that the Work is not in conformance with the Specifications or other Contract Documents, shall, within seven (7) days (except in the case of an emergency or item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Work, including, without limitation, the other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within seven (7) days, City, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period provide CM@Risk with notice that City will commence to correct such nonconforming Work with its own or other forces. CM@Risk shall be responsible for all costs and expenses that City incurs in remedying any Work not in conformance with the Specifications or the other Contract Documents, including, without limitation, at City's sole discretion any of City's own staff time costs and all fees incurred by City. City will notify CM@Risk of its intent to make such corrections at or before the commencement of the corrective work.

5.5. The two (2) year period referenced in Section 5.3 applies only to the CM@Risk's obligation to correct Work not in conformance with the specifications or Contract Documents and shall not constitute a period of limitations with respect to any other rights or remedies City may have with respect to CM@Risk's other obligations under the Contract Documents or under applicable law.

6. CM@RISK'S COMPENSATION

6.1. Payment for this Contract shall be based on hourly rates established in the attached Exhibit "A" for completion of the services, upon approval by the City. Total compensation for the services performed shall not exceed $70,926.00, unless otherwise authorized by the City. This fee includes an allowance of $14,000.00 for reimbursable expenses, which in no event will ever be more than actual cost.

6.2. The City will pay the CM@Risk installments based on monthly progress reports and detailed invoices submitted by the CM@Risk. Such payments will be made within thirty (30) days after receipt and approval of the progress report and detailed invoice by the City.

7. THE CITY'S RESPONSIBILITIES

7.1. The City will designate a project manager for the term of this Contract. The project manager has authority to administer this Contract and will monitor

compliance with all terms and conditions stated herein. All requests for information from or a decision by the City on any aspect of the Work will be directed to the project manager.

7.2. The City will review Deliverables by the CM@Risk, provide prompt responses to questions and render decisions to minimize delay in the progress of the CM@Risk Work. The City will keep the CM@Risk advised concerning the progress of the City's review of the Work. The CM@Risk agrees that the City's inspection, review, acceptance and/or approval of the CM@Risk's Work shall not relieve the CM@Risk's responsibility for errors or omissions of the CM@Risk or any of its Subcontractors.

7.3. Unless included in the CM@Risk's services as identified in herein, the City will furnish the following:

7.3.1. One copy of its maps, records, laboratory tests, survey ties and benchmarks, or other data in its possession pertinent to the services. However, the CM@Risk shall be solely responsible for researching the records, requesting specific drawings or information, and independently verifying all data.

7.3.2. Available City data on policies, regulations, standards, criteria and studies relevant to the Project.

7.4. The City additionally will:

7.4.1. Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project (Engineer). The scope of the services for the Engineer will be provided to the CM@Risk for informational purposes only. The CM@Risk shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Engineer.

7.4.2. Supply all necessary copies of programs and reports reasonably required by the CM@Risk.

7.4.3. Provide the CM@Risk with adequate information regarding the City's requirements for the Project.

7.4.4. Give prompt written notice to the CM@Risk in the event the City becomes aware of any default or defect in the Project or nonconformance with the Drawings and/or Specifications.

7.4.5. Notify the CM@Risk of changes concerning or affecting budget allocations.

7.4.6. Authorize the City's project manager to approve the Project budget and Project schedule, render decisions and furnish information to the CM@Risk.

8. TERMINATION

8.1. The City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, pursuant to A.R.S. §38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the CM@Risk. Termination shall be commenced by delivery of written notice to CM@Risk by the City personally or by certified mail, return receipt requested.

8.2. Immediately after receiving notice of termination, the CM@Risk shall discontinue the services under this Contract and close operations under this Contract. The CM@Risk shall appraise the services it has completed and submit an appraisal to the City for evaluation. The City shall have the right to inspect the CM@Risk's work to appraise the services completed.

8.3. The CM@Risk shall deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CM@Risk under the Contract, entirely or partially completed, together with all unused materials supplied by the City.

8.4. In the event of such termination, the CM@Risk shall be paid for services performed prior to receipt of notice of termination if approved by the City, including reimbursable expenses then incurred. CM@Risk shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that could reasonably have avoided.

8.5. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CM@Risk to the City's satisfaction based upon the scope of Work set forth in Exhibit "A." However, in no event shall the fee exceed that set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference as if it was fully set forth herein.

8.6. The City will make final payment within sixty (60) days after the CM@Risk has delivered all completed design phase services and the final design phase services fee has been approved by the City.

9. GENERAL SCOPE OF SERVICES

9.1. Project Meetings. The CM@Risk shall attend Project Team meetings and all other meetings as directed by the City.

9.2. The CM@Risk shall provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing in the event that the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the Cost Model, Project schedule, GMP Proposals and/or in the Contract Time.

9.3. The CM@Risk when requested by the City or at its own initiative, if previously approved by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings relevant to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any public agency meetings, as determined by the City.

10. CONSTRUCTION MANAGEMENT PLAN

10.1. The CM@Risk shall prepare a Construction Management Plan (CMP) which will detail but not necessarily be limited to the CM@Risk's determination concerning: (1) Project milestone dates and the Project schedule including the broad sequencing of the design and construction of the Project; (2) alternate strategies for fast-tracking and/or phasing the construction; (3) the number of separate sub-agreements to be awarded to Subcontractors and suppliers for the Project construction; (4) permitting strategy; (5) safety and training programs; (6) construction quality control; (7) a commissioning program, plant start-up and training; (8) the Cost Model and basis of the model; and (9) a matrix summarizing each Project Team member's responsibilities and roles.

10.2. The CM@Risk will add detail to its previous version of the CMP to keep it current throughout the design phase so that the CMP is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Drawings and Specifications; (b) the CM@Risk's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical conditions whether obtained by the City, Engineer or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right-of-way; (d) the fast-tracking of any of the construction or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment, if any, and/or materials; and (g) funding issues identified by the City.

11. PROJECT SCHEDULE

11.1. The fundamental purpose of the 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 the schedule as a basis for managing and monitoring compliance by all Project Team members with the requirements of the Project. Each Project Team member is responsible for compliance with the schedule requirements of the Project. The CM@Risk will develop and maintain the Project Schedule for the Project Team based on input received, consistent with the most recent revised/updated CMP. The Project schedule will use the critical path method (CPM) technique unless the City by written notice requires a different method. The CM@Risk will use scheduling software to develop a Project schedule acceptable to the City presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project schedule will indicate milestone dates for the phases once determined. The Project schedule's activities shall correlate with the schedule of values specified herein.

11.2. The CM@Risk shall include and integrate in the Project schedule the services and activities required of the City, Engineer and CM@Risk, including all construction phase activities. The Project schedule will detail all activities to the extent required to show: (a) the coordination between conceptual design, preliminary design and development of the construction documents (detailed design); (b) any separate long-lead procurements; (c) permitting issues; (d) any land and right-of-way acquisition; (e) bid packaging strategy and awards to subcontractors and suppliers; (f) major stages of construction; (g) start-up and commissioning; and (h) occupancy of the completed Work by the City. The Project Schedule will include, but not be limited to, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, if any, milestone dates for various construction phases, total float for all activities, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority and proposed dates for Substantial Completion and when the Work shall be ready for final acceptance.

11.3. The Project Schedule shall be updated and maintained by the CM@Risk throughout the design phase such that it will not require major revisions at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include comparison of the progress achieved to that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

11.4. Project Phasing. If phased construction is deemed appropriate and the City and Engineer approve, the CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work with the objective of reducing the Project schedule and/or Cost of the Work. The CM@Risk will take into consideration factors such 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 other factors pertinent to saving time and decreasing costs.

12. DESIGN DOCUMENT REVIEWS

12.1. The CM@Risk shall periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors that may impact the Cost Model, GMP Proposals and/or the Project schedule and update each accordingly.

12.2. The CM@Risk will identify, in conjunction with the Project Team, any additional surface and subsurface investigations that are required to provide the necessary information for the CM@Risk to construct the Project. After completion of design phase services, the CM@Risk may provide additional investigations to improve the adequacy and completeness of the site condition information and the data made available with the construction documents. The CM@Risk will be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific additional services.

12.3. The CM@Risk will meet with the Project Team as required, to review designs during development. The CM@Risk will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design and development of detailed design documents. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems and labor and material availability. The CM@Risk will advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as any concerns with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

12.4. As necessary to satisfy the needs of the Project Team, the CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications. The reviews will attempt to identify all discrepancies and inconsistencies in the construction documents, especially those related to clarity, consistency and coordination of Work of Subcontractors and suppliers.

12.5. Constructability Reviews. The 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/pre-assembly design are prepared to facilitate fabrication, transport and installation; (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions; (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and (g) 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.

12.6. Biddability Reviews. The CM@Risk will check cross-reference 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 of interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well in similar installations; (c) the design provides as-built data; (d) specifications include alternatives in the event a requirement cannot be met in the field; and (e) the Project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

12.7. The results of the reviews will be provided to the City in formal written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications, with notations and recommendations made on the documents. If requested by the City, the CM@Risk will meet with the City and Engineer to discuss findings and review reports. Responsibility for updating the Drawings and Specifications will remain with the Engineer and not the CM@Risk.

12.8. Notification of Variance or Deficiency. It is the CM@Risk's sole responsibility to determine and notify the Engineer as to whether the construction documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, it will promptly notify the Engineer and City in writing describing the apparent variance or deficiency.

12.9. Alternate Systems Evaluations. The Project Team will routinely identify and evaluate, using value engineering principles, any alternate systems, approaches and/or design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Engineer will perform a cost/benefit analysis of the alternatives and submit the analysis in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project.

The CM@Risk will include the cost of the alternatives in the Cost Model and any GMP Proposals.

13. COST MODEL, COST ESTIMATES AND SCHEDULE OF VALUES

13.1. As soon as practical during the conceptual design phase, the CM@Risk shall review all available information regarding the design and scope of the Project and other pertinent factors. CM@Risk will develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current to the design phase until a final GMP for the entire Project is established. The Cost Model shall constitute the best representation of what the complete functional Project's estimated construction costs. The CM@Risk will communicate in writing to the Project Team any assumptions made in preparing the Cost Model. The Cost Model will support the CM@Risk's construction cost estimates shall be broken down by Construction Standard Institute (CSI) Specification Divisions 1-16 and/or otherwise, as required by the City. The Cost Model shall also include allowances set by the Project Team, including but not limited to: (a) construction cost contingency based on an agreed upon percentage of a total estimated construction cost; (b) allowances for potential additional quantities and/or additional Work that the City may require; and(c) any costs as required by the City.

13.2. After receipt of the Engineer's most current documents from certain specified design phase milestones, the CM@Risk will provide a detailed written report to the Project Team regarding the impact of and changes to the Cost Model based on the CM@Risk's review of the design documents. The Engineer and the CM@Risk will reconcile any disagreements on the Cost Model to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design phase milestone. The design phase milestones applicable to this paragraph are: detailed design completion at 60%, 90% and 100%. If no consensus is reached, the City will make the final determination. If the Project Team requires additional updates of the Cost Model beyond what is specified herein, the CM@Risk will timely provide the requested information.

13.3. If at any point the Cost Model submitted to the City exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or the City's Project budget, the CM@Risk will make appropriate recommendations to the City and Engineer on means/methods, materials and/or other design elements to reduce the estimated construction costs, without altering the City's parameters such that it is equal to or less than the established Project Team's target and/or the Project budget.

13.4. Upon completion of the 90% detailed design review, included with the associated report, the CM@Risk will submit to the City for approval, a schedule of values which complies with the following requirements. The schedule of values shall be based on the 16 CSI Divisions, and highlight significant variances from any

previously submitted schedule of values. The schedule of values will be directly related to the breakdowns reflected in the Project schedule and the CM@Risk's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-off's; (b) segregate Work covered by any changes to construction phase Work already in progress; (c) reconcile used and remaining contractor's contingency allowance; (d) detail all other allowances and unit price Work shown and specified in the detailed design documents; and (e) segregate unit costs, material and equipment costs, labor costs, General Conditions Costs, hourly labor rates, payment for design services, and total cost. Labor costs therein will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by subcontractors will include Subcontractor overhead and profit.

13.5. As required herein, the CM@Risk shall submit a final Schedule of Values to the City, based on the one hundred percent (100%) detailed design set of Drawings and Specifications for the entire Project or any portion thereof, which final schedule of values will also be included in any proposed GMP(s).

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

14. GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

14.1. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City and consistent with the City's request for GMP Proposal. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current updated/revised Cost Model at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

14.2. GMP Proposals for the entire Project shall be the sum of the maximum Cost of the Work and include the CM@Risk's Construction Fee, General Conditions Fee and Contractor's Contingency. The CM@Risk guarantees to complete the Project at or less than the final approved GMP Proposal, defined as the Contract Amount for the construction phase contract, and agrees that it will be solely responsible for any difference between the actual Cost of the Work and the Contract amount.

14.3. The CM@Risk, in preparing any GMP Proposal, shall obtain from the Engineer three (3) sets of signed, sealed and dated construction documents, including all addenda. The CM@Risk will prepare its GMP Proposal requirements based on the most current completed construction documents at that time. The CM@Risk will provide one (1) set of those documents to the City's Project Manager, retain one set and return the third set to the Engineer.

14.4. An updated/revised Project schedule shall be included with any GMP Proposal that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal is based. Any such Project schedule updates/revisions will continue to comply with the requirements of Section 3.

14.5. In the event the CM@Risk elects to maintain a Contractor's Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. In addition, the terms and conditions regarding use of that allowance during the construction phase will be established by the City and reflected in the Contract for that phase of the Project.

14.6. The CM@Risk's Construction Fee is set at eight percent (6.0%) of the combined total of the Cost of the Work, General Conditions (general expense costs) and Contractor's Contingency.

15. REVIEW AND APPROVAL OF GMP PROPOSAL(S)

15.1. The CM@Risk shall meet with the City and Engineer to review any GMP Proposal and the written statement of its basis. In the event the City or Engineer discovers inconsistencies or inaccuracies in the information presented, the CM@Risk shall make adjustments as necessary to the GMP Proposal its basis.

15.2. Upon receipt of any GMP proposal from the CM@Risk, the City may submit the same documents that were used by the CM@Risk in developing the GMP to an independent third party or to the Engineer for review and verification. The third party or Engineer shall develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposal.

15.3. If the CM@Risk GMP Proposal is greater than the independent third party or Engineer's estimate, the City may require the CM@Risk to reconfirm the GMP Proposal. The CM@Risk will accept the independent third party's or Engineer's estimate for the Cost of Work as part of the GMP or present a report to the City within seven days of a written request by the City identifying, explaining and substantiating the differences. The CM@Risk may be requested to submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following:

15.3.1. Accept the CM@Risk GMP Proposal in the City's sole discretion;

15.3.2. Accept the CM@Risk GMP Proposal that exceeds the City's budget and agree to increase the Project Budget to fund the differences;

15.3.3. Reject the CM@Risk's GMP Proposal. The City may terminate this Design Phase Contract or elect not to enter into a contract with the CM@Risk for the construction phase of this project; or,

15.3.4. Take other actions deemed appropriate by the City.

15.4. If during the review and negotiation of GMP Proposals, design changes are required and agreed upon, the City will authorize and cause the Engineer to revise the Construction Documents to the extent necessary to reflect the agreed upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Engineer and City if any such revised Construction Documents are inconsistent with the agreed upon assumptions and clarifications.

16. SUBCONTRACTOR AND SUPPLIER SELECTIONS

16.1. The CM@Risk will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

16.2. If the City objects to any nominated subcontractor or supplier or to any Self-Performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or supplier. This provision shall in no way be deemed to diminish CM@Risk's responsibility for Subcontractor or impose liability upon the City for contracting with any Subcontractor.

16.3. All Subcontractors doing work in excess of Thirty Thousand Dollars ($30,000.00) shall maintain, during the course of the Contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees as required by the City of Tempe Guidelines for Implementation of Health Insurance, and Resolution No. 2000.73.

16.4. The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors.

16.5. If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved bidders for those specific bid packages. If the CM@Risk is approved as a Subcontractor and submits the lowest responsive bid,

then the CM@Risk may self-perform those portions(s) of the Work. If events warrant and the City concurs, the CM@Risk may self-perform Work in order to insure compliance with the Project Schedule and/or GMP(s).

16.6. The City, at the required time, will close the bidding and collect all bids received within the prescribed deadline for receipt of bids. The bids will be read aloud in a public opening at a location agreed upon by the City. The CM@Risk will submit a completed bid tabulation form to the City within a reasonable time after the closing of the bid opening proceedings.

16.7. If after receipt of bids or after award of Subcontractors or suppliers, the City objects to any nominated Subcontractor or supplier or to any self-performed Work for good cause, the CM@Risk will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted bids for the Work identified. Once such substitute Subcontractors and suppliers are approved by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

16.8. The CM@Risk, upon opening of bids for Subcontractors will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low bidder. The CM@Risk will resolve any bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

16.9. Within fifteen Days after Subcontractor bid opening, the CM@Risk will deliver to the City a written notice of intent to award, itemizing the Subcontractors and suppliers selected by the CM@Risk. The notice of intent to award will detail: (a) for each Subcontractor agreement, the amount of the bid and the corresponding Subcontractor or supplier; (b) the sum of bids received for all intended Subcontractor agreements; and (c) trade work that the CM@Risk intends to self-perform, if any.

16.10. Promptly upon receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will: (a) review the nominated state of Subcontractors and suppliers and discuss the City's objections to any nominated Subcontractor or supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed contract price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining City's Contingency within the Contract Price for the construction phase Work; (e) resolve possible scheduling issues with the commencement date of the Contract for the construction phase Work; (f) schedule the design conference; and, (g)

discuss other matters as needed.

17. INSURANCE

17.1. Without limiting any of their obligations or liabilities, the Construction Manager at Risk or "CM@Risk", at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

17.2. General Clauses.

17.2.1. Additional Insured. Insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name the City, its agents, representatives, directors, officials, and employees, as additional insureds, and shall specify that insurance afforded the CM@Risk shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the CM@Risk.

17.2.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until the Services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the City.

17.2.3. Primary Coverage. The CM@Risk's insurance shall be primary insurance as respects the City and any insurance or self insurance maintained by the City shall be in excess of the CM@Risk's insurance and shall not contribute to it.

17.2.4. Claim Reporting. The CM@Risk shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect the City.

17.2.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CM@Risk.

17.2.6. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible or

self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. The CM@Risk shall be solely responsible for deductible or self-insured retentions and the City may require the CM@Risk to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

17.2.7. Policies and Endorsements. The City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

17.2.8. Certificates of Insurance. Prior to commencing Services under this Contract, the CM@Risk shall furnish the City with Certificates of Insurance or formal endorsements as required by the Contract issued by CM@Risk's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number and shall provide for not less than thirty (30) days advance written notice by certified mail of cancellation or termination.

17.2.9. Subconsultants/Subcontractors. The CM@Risk shall include all subconsultants and Subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and Subcontractor.

17.3. Workers' Compensation.

17.3.1. The CM@Risk shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CM@Risk employees engaged in the performance of the services and employer's liability insurance of not less than $100,000 for each accident, $100,000 disease coverage for each employee, and $500,000 disease policy limits.

17.3.2. In case services are subcontracted, the CM@Risk will require the subconsultant to provide workers' compensation and employer's liability to at least the same extent as provided by the CM@Risk.

17.4. Automobile Liability.

The CM@Risk shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than $1,000,000, each occurrence, regarding any owned, hired and non-owned vehicles assigned to or used in performance of the CM@Risk's services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance

Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

17.5. Commercial General Liability.

17.5.1. The CM@Risk shall carry commercial general liability insurance with unimpaired limit of not less than $1,000,000 for each claim with a $2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the Services under this Contract or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury including death, property damage, personal injury, products, completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage shall be at least as broad as Insurance Service Office policy form CG 0001 7/98 or any replacement thereof.

17.5.2. In the event the general liability insurance policy is written on a claims made basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

17.5.3. Such policy shall contain a severability of interest provision (also known as cross-liability and separation of insured).

17.6. Contractor Professional Liability.

The CM@Risk retained by the City to provide the Services required by the Contract shall maintain contractor professional liability insurance covering errors and omissions arising out of the services performed by the CM@Risk or any person employed by the CM@Risk with an unimpaired limit of not less than $1,000,000 each claim and $1,000,000 all claims or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a claims made basis, coverage shall extend for two (2) years past completion and acceptance of Services as evidenced by annual certificates of insurance.

17.7. Property Coverage – Valuable Papers.

The CM@Risk shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports or other similar data relating to the services of the CM@Risk used in the completion of this Contract.

17.8. Health Insurance Requirements.

17.8.1. All Consultants who enter into a Public Works contract in excess of Thirty Thousand Dollars ($30,000.00) with the City of Tempe, after January 1, 2001, must certify that they have, and all of their major subconsultants will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-1). Major subconsultants are defined as entities doing work in excess of Thirty Thousand Dollars ($30,000.00) as determined at the start of each project. All required health insurance must be maintained during the entire time of the Contract with the City.

17.8.2. Health insurance is required for all consultant and major sub-consultant employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four (24) hour period, regardless of number of hours that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

17.8.3. The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.

17.8.4. All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

17.8.5. In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the Contract.

17.8.6. All Consultants subject to the health insurance requirements shall post, in English, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City at the pre-construction conference for Contractors and sent with the executed contract for Consultants.

18. PROJECT DOCUMENTS AND COPYRIGHTS

18.1. City Ownership of Project Documents. All work products (electronically or manually generated) prepared in the performance of this Contract including but not limited to, plans, drawings, specifications, cost estimates, tracings, studies, design, analysis, CADD files and related products, are the property of the City and are to be delivered to the City before the final payment is made to the CM@Risk.

18.2. Documents to Bear Seal. When applicable and as required by law, the CM@Risk and its Subcontractors will endorse by professional seal all plans, works, and Deliverables prepared by them for this Contract.

19. CONFLICT OF INTEREST

19.1. The CM@Risk agrees to disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this Contract. Further, the CM@Risk agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if the CM@Risk gains such interest during the course of this Contract. Only if previously approved in writing by the City, the CM@Risk may retain originals and supply the City with reproducible mylar copies of the work.

19.2. If the CM@Risk gains financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of the City.

19.3. The CM@Risk shall not engage the services on this Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.

19.4. To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City.

19.5. Actions considered to be adverse to the City under this Contract include but are not limited to:

19.5.1. Using data as defined in the Contract, acquired in connection with this Contract, to assist a third party pursuing administrative or judicial action against the City.

19.5.2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City.

19.5.3. Using data to produce income for the CM@Risk or its employees independently of performing the Services under this Contract, without the prior written consent of the City.

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

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

20. COVENANT AGAINST CONTINGENT FEES

The CM@Risk affirms that it has not employed or retained any company or person, other than a bona fide employee working for the CM@Risk, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, the City shall terminate this Contract or in its discretion may deduct from the Contract price or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift or contingent fee from the CM@Risk.

21. INDEMNIFICATION

To the fullest extent permitted by law, the CM@Risk shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the CM@Risk, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the CM@Risk may be legally liable in the performance of or any breach of this Contract, including failure to comply with applicable laws. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. This provision shall survive the term of the Contract.

22. DISPUTE RESOLUTION

In the event of a dispute between the parties to this Contract regarding a provision of this Contract, a party's performance of its obligations as stated in this Contract or any other matter governed by the terms of this Contract, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the City may pursue any and all remedies provided by law or in equity. The exercise of any one of City's remedies shall not preclude subsequent or concurrent exercise of further or

additional remedies.

23. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by the CM@Risk without prior written authorization from the City. Additional services, when authorized by an agreement or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between the City and the CM@Risk.

24. ALTERATION IN CHARACTER OF WORK

In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of Services, costs of performance or Project schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a change order or amendment must be approved and executed by the City, and executed by the CM@Risk. Such change order or amendment will not be effective unless approved by the City. Additions to, modifications or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may be adjusted accordingly solely at the discretion of the City. No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is previously authorized in writing by the City. Work or material(s) furnished by the CM@Risk without such prior written authorization shall be at the CM@Risk's sole jeopardy, cost and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

25. SUCCESSORS AND ASSIGNS

This Contract shall not be assignable except by the prior written approval of the City, and it shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

26. SPECIAL PROVISIONS

26.1. This Contract shall be in full force and effect only upon approval by the City Council of the City of Tempe, Arizona, and after execution by the duly authorized City official and duly authorized agent of the CM@Risk.

27. COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

The CM@Risk is solely be responsible for the completeness and accuracy of all reviews, reports, supporting data and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract, and will at its sole expense correct its Work or Deliverables. Acceptance or approval of the CM@Risk's Work or Deliverables

by the City does not relieve or diminish the CM@Risk's responsibilities under the Contract, nor does this requirement to correct the Work or Deliverable constitute a waiver of any claims or damages otherwise available by law or in equity pursuant to the Contract by the City.

28. DISSEMINATION OF DATA

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

28.2. The parties agree that all data, including originals, images and reproductions prepared by, obtained by or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is the sole property of the City.

28.3. The CM@Risk shall not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the Services required under this Contract. However, these prohibitions do not apply to the following data, provided the CM@Risk first provides the required notice to the City:

28.3.1. Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;

28.3.2. Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or

28.3.3. Data which is required to be disclosed by the CM@Risk by law, regulation or court order.

28.4. In the event a third party requires or requests the CM@Risk to disclose data or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this section of the request or demand for such data. The CM@Risk will timely give the City sufficient facts such that the City has a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

28.5. The CM@Risk, unless prohibited by law, within ten (10) days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the provisions of this section.

28.6. The CM@Risk assumes all liability for maintaining the data in its possession and agrees to compensate and indemnify the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents, assigns, subconsultants or Subcontractors. A breach of this section shall be deemed to cause irreparable harm to the City that justifies injunctive relief.

29. PROJECT STAFFING

29.1. Prior to the start of any Work or Deliverables under this Contract, the CM@Risk will submit to the City, an organizational chart for the CM@Risk staff and subconsultants and detailed resumes of key personnel listed in its response to the City's request for qualifications or subsequent fee proposals and revisions thereto, to involved in performing the Services prescribed in the Contract. Unless otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such Services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such Services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel includes, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform Services of cost estimating, scheduling, value engineering and procurement planning.

29.2. The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of Services described in this Contract throughout the period of those Services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with other personnel acceptable to the City.

30. INDEPENDENT CONTRACTOR

The CM@Risk is and shall be an independent contractor and whatever measure of control the City exercises over the Work or Deliverable pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed as establishing an employer/employee relationship, partnership or joint venture, between City and CM@Risk, or cause City to be responsible in any way for the debts or obligations of CM@Risk. CM@Risk are to comply with all applicable laws and ordinances pertaining thereto.

31. SUBCONSULTANTS

Prior to beginning any Work or Deliverables, the CM@Risk will furnish to the City for approval, the names of all subconsultants to be used on this Project. Any changes of subconsultants are subject to the approval of the City. This provision shall in no way be deemed to diminish CM@Risk's responsibility for subconsultant or impose liability upon the City for the contracting with any subconsultant.

32. LABOR

CM@Risk agrees and covenants to use only licensed CM@Risks and subCM@Risk(s) in the making and/or installation of any and all repairs, alterations, improvements or other work of CM@Risk on the Project. CM@Risk shall be liable to City for any losses and liabilities associated with any violation of this provision, and the Contract shall immediately be terminated upon any violation hereof by CM@Risk.

33. WITHOLDING PAYMENT

The City may withhold payment from any Progress Payment Application to the extent necessary to protect the City from loss because of:

33.1. Unsatisfactory job progress as determined by the City.

33.2. Disputed Work or materials.

33.3. Defective Work not remedied.

33.4. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors.

33.5. Failure of the CM@Risk to make payment to any Subcontractors within seven (7) days after receipt of each progress payment.

33.6. The CM@Risk's failure to perform any of its contractual obligations under the Contract Documents or any other agreement with the City.

33.7. Deficiencies or claims asserted by City against CM@Risk arising from any other project.

33.8. Damage to the City or a separate contractor caused by the fault or neglect of the CM@Risk or any Subcontractor to the extent not covered by insurance

33.9. Reasonable evidence that the entire Work or portion of the Work that the City has agreed to accept separately will not be substantially complete within the Contract time(s) due to delay for which the CM@Risk is responsible, or that the unpaid balance of the Guaranteed Maximum Price will not be adequate to cover completion of the entire Work and liquidated damages for any anticipated unexcused delay for which the CM@Risk is responsible; or

33.10. Any other reason which is the City's reasonable judgment disqualifies CM@Risk from receving the full amount of the application for payment.

If the above basis for withholding payment is remedied, payment shall be made within fourteen (14) days for amounts previously withheld. Prior to any withholding pursuant to this Section 33, the City shall meet with CM@Risk to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

34. RECORDS/AUDIT

34.1. Records of the CM@Risk's direct personnel payroll and reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk will be kept following generally accepted accounting principles, or other and recognized accounting methods at the City's sole discretion. The City, its authorized representative and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any attendant change orders. The City reserves the right to decrease Contract amount and/or payments made on this Contract if, *interalia*, upon audit of the CM@Risk's records, the audit discloses that CM@Risk has provided false, misleading or inaccurate cost and/or pricing data.

34.2. The CM@Risk will include a provision in all of its agreements with subconsultants, Subcontractors and Suppliers providing services under this Contract to ensure the City, its authorized representative and/or the appropriate governmental agency, has access to the subconsultants', Subcontractors' and suppliers' records. The City reserves the right to decrease Contract amount and/or payments made on this Contract if the above provision is not included in subconsultant, Subcontractor and supplier contracts and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

35. NOTICES

Unless otherwise provided herein, notices and/or demands under this Contract shall be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid, and properly addressed as follows:

To City:	Andy Goh, P.E. Deputy Public Works Manager/ City Engineer City of Tempe Public Works Engineering Division 31 East 5th Street Tempe, Arizona 85281
To CM@Risk:	Dan Kuwitzky Valley Rain Construction Corporation 1614 E. Curry Road Tempe, AZ 85281
To Engineer:	Jim Hansen, P.E. LP/Gas Engineering 7373 E. Doubletree Ranch Road, Suite B-155 Scottsdale, AZ 85258

Copy to:	Chris Kabala City of Tempe Public Works Engineering Division 31 E. 5th Street Tempe, AZ 85281

36. LEGAL COMPLIANCE

36.1. Employment Laws. CM@Risk agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. CM@Risk hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

36.2. Equal Opportunity. City is an equal opportunity, affirmative action employer. CM@Risk hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. CM@Risk covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.

37. COMPLIANCE WITH FEDERAL LAWS

37.1. Specially Designated Nationals and Blocked Persons List. CM@Risk represents and warrants to City that neither CM@Risk nor any affiliate or representative of CM@Risk (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendre*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

38. CONTRACTOR'S LICENSE AND PRIVILEGE TAX LICENSE

Prior to award of the Contract, the CM@Risk must provide to the City's Public Works/ Engineering Department, its Contractor's license classification and number, its City of Tempe privilege tax license number and its federal tax I.D. number.

39. FORCE MAJEURE

If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party, financial inability excepted, performance of that act may be excused at the City's discretion, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

40. NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract shall not be construed as a waiver of such provisions nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each and every provision.

41. JURISDICTION

This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

42. ATTORNEYS' FEES AND COSTS

In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such legal action or proceeding, and such fees and costs shall be included in any judgment rendered as determined by the Court. In addition, if any person should institute a claim or action against the CM@Risk in which City is made a party defendant, CM@Risk shall indemnify, defend and hold City harmless for, from and against all liability by reason thereof, including reasonable attorney's fees and all costs incurred by City in such action.

43. SURVIVAL

All warranties, representations and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

44. MODIFICATION

No supplement, modification or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract except as expressly provided herein to the contrary.

45. INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

46. TIME IS OF THE ESSENCE

Time of each of the terms, covenants and conditions of this Contract is hereby expressly made of the essence.

47. THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

48. COOPERATION AND FURTHER DOCUMENTATION

The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

49. CONFLICT IN LANGUAGE

All work of Deliverables performed will conform to all applicable City of Tempe codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits thereto, the provisions in this Contract will prevail.

50. SUCCESSORSHIP

The provisions of this Contract shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

51. GOVERNING LAW

Interpretation of the Contract, the Contract Documents and any and all claims, controversies, disagreements and disputes arising under or in connection with the Project, Work, the Contract Documents or the Contract shall be governed by the laws of the State of Arizona, without giving effect to conflicts of law principles. No suit or action shall be commenced by any claimant other than in the Arizona Superior Court in Maricopa County, Arizona, and only after all contractual and administrative claims, controversies, dispute and disagreement resolution procedures have been fulfilled.

52. SEVERABILITY

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents which shall remain in full force and effect as if the unenforceable provision or part were deleted.

53. NO WAIVER

The failure of either CM@Risk or City to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation.

54. HEADINGS

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

55. NON-APPROPRIATION

If funds either appropriated by the City Council or otherwise allocated to perform the Work become unavailable for payment by the City under the Contract Documents, the City may delay the Work for a period up to six (6) months, after which date if no funds

are legally available, the Contract Documents then in effect may be terminated by City at its option. In case of any such delay by City, CM@Risk may suspend performing the design phase services or Work, as applicable. CM@Risk may not terminate the Contract Documents.

56. ASSIGNMENT OF CLAIMS

The City and CM@Risk recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore the CM@Risk hereby assigns to the City any and all claims for such overcharges. The CM@Risk in all subcontracts shall require all Subconractors to likewise assign all claims for overcharges to the City.

57. DISPUTES

Any failure of the City to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of any CM@Risk claim for relief.

58. AMENDMENTS

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by duly authorized representatives of CM@Risk and City.

59. CM@RISK RECORDS

CM@Risk agrees to retain all records relating to the Contract Documents. CM@Risk agrees to make those records available at all reasonable times for inspection and audit by City during the term of the Contract Documents and for a period of five (5) years after the completion of the Contract Documents. The records shall be provided at City Public Works Department, Engineering Division, Tempe, Arizona, or another location designated by City upon reasonable notice to CM@Risk.

60. NO CONSTRUCTION AGAINST DRAFTING PARTY

Each party acknowledges that it has had an opportunity to review the Contract Documents with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Contract this_____ day of _____, 2008.

CITY OF TEMPE, ARIZONA

By_____
Mayor

By_____
Public Works Manager

ATTEST:

Recommended By:

_____
City Clerk

_____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

_____
City Attorney

The CM@Risk warrants that the person who is signing this Contract on behalf of the CM@Risk is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

CONSTRUCTION MANAGER AT RISK
Valley Rain Construction Corporation

_____
Name

_____
Title

_____
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

_____
Karen M. Fillmore
Records Specialist

EXHIBIT A

RIO EAST LINEAR PARK, COT PROJECT NO. 6506011

CM@R PRECONSTRUCTION CONTRACT PROPOSAL

VALLEY RAIN CONSTRUCTION CORPORATION

5/28/2008 version 2

Professional Staff- Man Hours

Task No.	Item/Preconstruction Phase	Owner Man Hours	Owner Cost (Rate 164.79)	VP Construction Man Hours	VP Construction Cost (Rate 153.43)	Project Mgr. Man Hours	Project Mgr. Cost (Rate 102.31)	Chief Estimator Man Hours	Chief Estimator Cost (Rate 106.09)	Estimator Man Hours	Estimator Cost (Rate 70.95)	Admin. Assistant Man Hours	Admin. Assistant Cost (Rate 50.13)	Job Accountant Man Hours	Job Accountant Cost (Rate 63.38)	Purchasing Agt. Man Hours	Purchasing Agt. Cost (Rate 76.63)	Gen Supt. Man Hours	Gen Supt. Cost (Rate 106.09)	Field Supt. Man Hours	Field Supt. Cost (Rate 80.58)
1.0	**START UP**																				
	Staff Orientation			4	613.71	2	204.62	2	212.19	1	70.95							1	106.09	1	80.58
	Team Kickoff--Partnering			8	1,227.43	3	306.92	4	424.38									4	424.38	4	322.32
	Conceptual Schedule			4	613.71																
4.0	**DESIGN DEVELOPMENT DOCUMENTS (60%)**																				
	Progress Meetings-2 ea			8	1,227.43			8	848.76												
	Schedule Updates - 1					2	204.62											4	424.38	4	322.32
	Constructability Review			4	613.71			4	424.38												
	60% Estimate, 100% GMP 1			8	1,227.43			20	2,121.89	20	1,419.08										
	Utility Coordination					16	1,636.92														
	Value Engineering			4	613.71	8	818.46	8	848.76	4	283.82										
	Subcontractor Qualifications									4	283.82	32	1,604.07								
5.0	**CONSTRUCTION DOCUMENTS 90%**																				
	Progress Meetings-2 ea			8	1,227.43			8	848.76												
	CPM Full Schedule and Updates					8	818.46														
	Value Engineering			4	613.71			16	1,697.51									4	424.38	4	322.32
	Constructability Review			4	613.71			8	848.76												
	GMP Estimating **GMP 1**			8	1,227.43			32	3,395.02	32	2,270.53										
	Bidability Review							4	424.38												
	GMP Exhibits			4	613.71					4	283.82										
6.0	**CONSTRUCTION DOCUMENTS 100%**																				
	Coordination Meetings (1EA)			8	1,227.43																
	Estimate Updates 100%			2	306.86			8	848.76	16	1,135.27										
	Schedule Update					2	204.62														
	Value Engineering			2	306.86	2	204.62	8	848.76	8	567.63							4	424.38	4	322.32
	Constructability Review			4	613.71	4	409.23	4	424.38	4	283.82										
	FCD Permit Coordination					16	1,636.92														
7.0	**GMP START UP**																				
	Plan Logging and Distribution					1	102.31			24	1,702.90										
	Develop Sub List			1	153.43	1	102.31	4	424.38												
	Prepare Sub Bid Scopes							8	848.76	16	1,135.27										
	Sub Bid Solicitation							2	212.19	16	1,135.27										
	Sub Bid Evaluation/ reporting			2	306.86			16	1,697.51												
	Subcontractor Interviews/ Rpt					2	204.62	8	848.76							4	306.54	8	848.76	8	644.65
	Site Planning and Staging					4	409.23							8	507.05						
	Cost Acounting and Billing					4	409.23														
	Subtotals			87		75		172		149		32		8		4		25		25	
					13,348.00		7,673.00		18,248.00		10,572.00		1,604.00		507.00		307.00		2,652.00		2,015.00
	Total Valley Rain Services		56,926.00																		
					Construction Cost		3,900,000.00														
400.0	**Allowances:**				% of Cost		1.5%														
	Printing		4,000.00																		
	Field Investigations		10,000.00																		
	Subtotal		70,926.00		If the project scope changes, these estimates may be re-evaluated and renegotiated with the Owner																
	Fee																				
	Sales Tax Excluded																				
	Professional Liability Insurance Excluded																				
	Total Contract Precon Contract Amount		70,926.00		This amount is "not to exceed." Actual hours will be estimated at the time of billing. Payroll documentation will not be available.																

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF CONSTRUCTION MANAGER AT RISK
REGARDING
HEALTH INSURANCE

_____,
Arizona

Date_____

Rio East Linear Park
Project No. 3202801

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of $30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company:_____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2008.

_____
Construction Manager at Risk

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBCRIBED AND SWORN to before me this _____ day of _____, 2008.

_____
Notary Public

My commission expires:

_____

City of Tempe
Guidelines for Implementation of Health Insurance

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of $30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of $30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.

2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.

3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.

4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.

5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.

6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.

8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

Glenn Kephart, P.E.
Public Works Manager