

**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 on the _____ day of _____, 2007 between the City of Tempe (“CITY”) and / (“CONSTRUCTION MANAGER AT RISK” OR “CM@RISK”).

THE CITY engages the CM@Risk to perform professional construction management design phase services for a project known and described as /, Project No. / (“Project”).

SECTION I – TERMS AND DEFINITIONS

Addendum – A written modification of a Design Phase Services contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while delivering a quality and functional Project that meets City requirements.

Amendment – A written modification of the terms of a contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

Calendar Day – Every day shown on the calendar including Saturdays, Sundays and holidays.

Change Order - A written modification of a Construction Services contract.

City (“Owner”) –The City of Tempe, a public body or authority and municipal corporation, with whom the CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to this Contract.

Construction Fee – The CM@Risk’s administrative costs, home office overhead 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 included in the General Conditions of the construction phase.

CM@Risk (“Construction Manager At Risk” Or “Contractor”) – The person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement.

Contingency, Contractor’s - A fund to cover cost growth during the project used at the discretion of the CM@Risk usually for costs that result from project circumstances. The amount of the CM@Risk’s contingency will be negotiated as a separate line item in each GMP package.

Contingency, Owner’s – A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s contingency will be set solely by

the Owner and will be in addition to the project costs included in the CM@Risk's GMP packages.

Contract - This written document, including its exhibits and attachments signed by the City and CM@Risk covering the design phase of the Project and including other documents (the "Contract Documents") itemized and referenced in or attached to and made part of this Agreement.

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

Contract Time(s) – The number of days or the dates related to the construction phase that as stated in Construction Documents apply to achievement of Substantial Completion and/or completion of the construction Work.

Cost of the Work - 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 construction, 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.

Cost Model - 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. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team.

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

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Agreement. 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 Agreements, Subcontractor Bid Packages, Supplier Agreements, and others as indicated in this Contract or required by the Project Team.

Design Engineer ("Design Professional") – The person firm or corporation named as such in this Agreement who has the rights, duties, responsibilities, and limits of authority as set forth in this Agreement and in the Design Engineer's or Design Professional's Agreement.

Design Engineer's Consultant – A person, firm, or corporation having a contract with the Design Engineer to furnish services required of the Design Engineer, as the Design Engineer's independent professional associate or consultant with respect to the Project.

Drawings – 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. Includes Drawings that have reached a sufficient stage of completion and have been 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 “NOT FOR CONSTRUCTION.” Shop drawings are not Drawings as so defined.

Effective Date of this Agreement – The date specified in this Agreement on which the Agreement becomes effective, but if no such date is specified, the date on which the last of the two parties signs this Agreement.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the CM@Risk during the construction phase: 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 liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or subcontractors; taxes on the Work and for which the CM@Risk is liable; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Exhibit “A” of this Agreement.

Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice of Award – 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 will sign and deliver this Agreement.

Notice to Proceed – A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Agreement.

Progress Payment Application – The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and/or the City.

Project – The total design and construction of which the design phase services and construction phase Work to be provided may be the whole or a part.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, City’s Water Utilities Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Samples – Physical examples of materials, equipment or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – 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.

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

Subcontractor – An individual, firm, entity or corporation having a direct contract with the CM@Risk who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in Exhibit “A” of this contract.

Substantial Completion - 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 30 days prior to projected substantial completion); (i) landscaping and site work; and (j) final cleaning.

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

Total Float – 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.

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

SECTION II - SERVICES OF THE CM@RISK

The CM@Risk shall perform the following professional construction management services required by and in accordance with this Agreement 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 construction contracting practice.

The CM@Risk has assigned \ as the Project Manager for this Contract. Prior written approval is required in the event the CM@Risk needs to change the Project Manager. The CM@Risk shall submit the qualifications of the proposed substituted personnel to the City for approval.

The CM@Risk shall furnish construction administration services as described in Exhibit "A". The Design Phase Services being provided under this agreement will not alter any real property owned by the City.

SECTION III - PERIOD OF SERVICE

The CM@Risk shall complete all design phase services within / calendar days of the "Notice to Proceed" date. In the event delays are experienced beyond the control of the CM@Risk, the schedule may be revised as mutually agreed upon by the City and the CM@Risk.

SECTION IV – CM@RISK’S COMPENSATION

- A. The method of payment for this Contract is an hourly, not to exceed, rate. Total compensation for the services performed shall not exceed \$/, plus approved adjustments as follows:

For basic services under this agreement, the CM@Risk shall receive a fee not to exceed \$/ plus \$/ for Reimbursable Expenses, which in no event will ever be more than actual cost.

- B. 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 of the progress report and detailed invoice.

SECTION V - THE CITY'S RESPONSIBILITIES

- A. The City will designate a project manager for the term of this Agreement. The project manager has the authority to administer this Agreement 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.
- B. 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 its subcontractors.
- C. Unless included in the CM@Risk's Services as identified in Section I, the City will furnish the CM@Risk, the following information or services for this Project:
1. One copy of its maps, records, laboratory tests, survey ties and benchmarks, or other data pertinent to the services. However, the CM@Risk shall be responsible for searching the records and requesting specific drawings or information and independently verifying said information.
 2. Available City data on policies, regulations, standards, criteria and studies relevant to the Project.
- D. The City additionally will:
- 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 its information. The CM@Risk will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Engineer.
- Supply, without charge, all necessary copies of programs and reports reasonably required by the CM@Risk.
- Provide the CM@Risk with adequate information regarding the City's requirements for the Project.
- Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or nonconformance with the Drawings and Specifications.
- Notify the CM@Risk of changes affecting budget allocations.
- Give the City's Project Manager authority to approve the Project Budget and Project Schedule, and render decisions and furnish information to the CM@Risk.

SECTION VI - TERMINATION

The City, at its sole discretion, may terminate this Contract for convenience or terminate any portion of the Project for which services have not been performed by the CM@Risk, upon

fourteen (14) days written notice delivered to the CM@Risk personally or by certified mail at /.

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.

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.

In the event of such termination, the CM@Risk shall be paid for services performed prior to receipt of notice of termination including reimbursable expenses then incurred.

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 based upon the scope of work set forth in Exhibit A, and shall be agreed upon mutually by the CM@Risk and the City. 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.

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 agreed upon.

In the event this CM@Risk Contract is terminated, the City shall have the option of completing the work or entering into a CM@Risk Contract with another party for the completion of the work according to the provisions and agreements herein.

SECTION VII - CITY'S RIGHT OF CANCELLATION

All parties hereto acknowledge that this contract is subject to cancellation by the City of Tempe pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

SECTION VIII - SUPPLEMENTAL CONTRACT PROVISIONS

The supplemental contract provisions to this Contract are attached hereto and incorporated herein by this reference as if they were fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Contract this _____ day of _____, 20076.

CITY OF TEMPE, ARIZONA

By _____
Mayor

By _____
Public Works Manager

ATTEST:

Recommended By:

City Clerk

Deputy PW Manger/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

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist