



RYAN N. PATTERSON
MANAGER-CLERK
ST. JOHNS, AZ 85936

**BOARD OF SUPERVISORS
OF APACHE COUNTY**

P.O. BOX 428
ST. JOHNS, ARIZONA 85936

TELEPHONE: (928) 337-7503
FACSIMILE: (928) 337-2003

JOE SHIRLEY, JR.
CHAIRMAN OF THE BOARD
DISTRICT I
P.O. Box 1952, Chinle, AZ 86503

ALTON JOE SHEPHERD
MEMBER OF THE BOARD
DISTRICT II
P.O. Box 994, Ganado, AZ 86505

TRAVIS SIMSHAUSER
VICE CHAIRMAN OF THE BOARD
DISTRICT III
P.O. Box 428, St. Johns, AZ 85936

**NOTICE OF A SPECIAL TELEPHONIC PUBLIC MEETING AND
AGENDA OF THE APACHE COUNTY BOARD OF SUPERVISORS**

July 25, 2019

Board of Supervisors' Hearing Room, First Floor

75 West Cleveland Street

St. Johns, Arizona

10:00 a.m. MST

1. Engineering Department: Discussion and possible approval to award the Pre-Construction Contract for the "Lodge" to Nicoll Construction for \$5,000.

Posted this 24th day of July 2019 at 9:00 a.m. by BTB.

Ryan N. Patterson
Clerk of the Board

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

ENGINEERING

Date/Signature 07/23/19



Describe in detail what you want to say to the Board and what action you want the Board to take: DISCUSSION AND POSSIBLE APPROVAL TO AWARD PRE-CONSTRUCTION CONTRACT FOR THE "LODGE" TO NICOLL CONSTRUCTION FOR \$5,000.00.

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other: _____

Legal Review: _____

Signature: _____

Finance Review: _____

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, item approved for Agenda. Supervisor/Board Clerk's Initials _____

Beth Bond

From: Joe Young <JYoung@apachelaw.net>
Sent: Wednesday, July 24, 2019 9:01 AM
To: Ferrin Crosby; Michael Whiting
Cc: Beth Bond
Subject: RE: The Lodge Teen Legacy Center - Preconstruction Services Contract

I have reviewed the contract, and it is a legal document

From: Ferrin Crosby [mailto:cfcros@co.apache.az.us]
Sent: Wednesday, July 24, 2019 7:48 AM
To: Joe Young <JYoung@apachelaw.net>; Michael B. Whiting <MWhiting@apachelaw.net>
Cc: Beth Bond <bbond@co.apache.az.us>
Subject: The Lodge Teen Legacy Center - Preconstruction Services Contract

Joe, Michael,

Attached is the preconstruction services contract for Nicoll construction.
Please review and approve for Telephonic BOS meeting Thursday.
Sorry for short notice, we just got it back and Judge Latham would like to move as quickly as possible.

Thanks,

Ferrin

“THE LODGE” - LEGACY TEEN CENTER

APACHE COUNTY

**CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES CONTRACT**

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
RECITALS	1
AGREEMENT	1
ARTICLE 1 – TERMS AND DEFINITIONS	1
ARTICLE 2 – BASIC PRECONSTRUCTION SERVICES	5
2.1 GENERAL.....	5
2.2 CONSTRUCTION MANAGEMENT PLAN.....	6
2.3 PROJECT MASTER SCHEDULE.....	6
2.4 DESIGN DOCUMENT REVIEWS	8
2.5 COST ESTIMATES	9
2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS	10
2.7 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS	12
ARTICLE 3 – PERIOD OF SERVICES.....	13
ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS.....	13
4.1 CONTRACT AMOUNT.....	13
4.2 PAYMENTS	13
4.3 ADDITIONAL PRECONSTRUCTION SERVICES	14
ARTICLE 5 - OWNER'S RESPONSIBILITIES	14
ARTICLE 6 – CONTRACT CONDITIONS	15
6.1 PROJECT DOCUMENTS AND COPYRIGHTS.....	15
6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK.....	16
6.3 ALTERATION IN CHARACTER OF WORK	16
6.4 DATA CONFIDENTIALITY.....	16
6.5 PROJECT STAFFING.....	17
6.6 INDEPENDENT CONTRACTOR.....	18
6.7 SUBCONSULTANTS.....	18
6.8 TERMINATION.....	18
6.9 DISPUTE AVOIDANCE AND RESOLUTION	19
6.10 WITHHOLDING PAYMENT	19
6.11 RECORDS/AUDIT.....	19
6.12 INDEMNIFICATION.....	20
6.13 NOTICES.....	20
6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION.....	20
6.15 COMPLIANCE WITH FEDERAL LAWS	21
6.16 CONFLICT OF INTEREST	21
6.17 CONTRACTOR'S LICENSE	21
6.18 SUCCESSORS AND ASSIGNS	21
6.19 FORCE MAJEURE	22
6.20 COVENANT AGAINST CONTINGENT FEES.....	22
6.21 NON-WAIVER PROVISION	22

6.22 JURISDICTION22

6.23 SURVIVAL22

6.24 MODIFICATION22

6.25 SEVERABILITY23

6.26 INTEGRATION23

6.27 TIME IS OF THE ESSENCE.....23

6.28 THIRD PARTY BENEFICIARY23

6.29 COOPERATION AND FURTHER DOCUMENTATION23

6.30 CONFLICT IN LANGUAGE.....23

6.31 OWNER'S RIGHT OF CANCELLATION23

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS.....23

ARTICLE 7 - INSURANCE.....24

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE24

7.2 OTHER INSURANCE REQUIREMENTS25

7.3 SUBCONSULTANT INSURANCE25

7.4 NOTICE OF CANCELLATION25

7.5 ACCEPTABILITY OF INSURERS26

7.6 VERIFICATION OF COVERAGE.....26

7.7 APPROVAL26

EXHIBIT A – PROJECT DESCRIPTION27

EXHIBIT B - HOURLY RATE SCHEDULE.....28

EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP.....29

CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION SERVICES

THIS CONTRACT, made and entered by and between the Apache County, hereinafter designated the "OWNER" and Nicoll Construction, an Arizona corporation, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk."

RECITALS

- A. The Owner's Board of Supervisors is authorized and empowered to execute contracts for professional services and construction services.
- B. The Owner intends to implement a district wide energy savings and upgrade project, as more fully described in Exhibit A attached, hereinafter referred to as the "Project". The Project is to be located in Eagar, Arizona.
- C. To undertake the design of said Project the Owner has entered into a contract with Historic Streetscapes hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the Owner the ability to provide preconstruction services and to construct the Project.
- E. Based on this representation, the Owner intends to enter into a contract with the CM@Risk for the Preconstruction services identified in this contract. At the end of the design phase, at the Owner's sole discretion, the Owner may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

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

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda – Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Contract – means this written document signed by the Owner and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

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

Application and Certificate for Payment – The AIA Form G702/G703 or equivalent form that is proposed by the CM@Risk and, if acceptable by the Owner, shall be 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 Owner. If Contractor is unable to provide a form acceptable to Owner, Owner will provide the form for use by Contractor.

Change Directive means a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

Change Order – means a type of contract amendment issued after execution of the Contract Documents signed by the Owner and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or other modifications of other Contract terms.

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

Construction Documents – Means certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk’s administrative costs, home office overhead, and profit, as applicable to the construction of this project, whether at the CM@Risk’s principal or branch offices.

Construction Manager at Risk (CM@Risk) – The firm selected by the Owner to provide the Preconstruction Services as detailed in this Contract.

CM@Risk Representative – CM@Risk designates Courtney Gleave as its CM@Risk Representative.

CM@Risk Senior Representative – CM@Risk designates Brian Nicoll as its Senior Representative.

Contingency, CM@Risk’s – A fund to cover cost growth during construction of 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. Use and management of the CM@Risk’s Contingency is described in Section 2.6.2.3.

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. Use and management of the Owner’s Contingency is described in Section 2.6.3.

Contract Amount – The cost for services for this Contract as identified in Article 4.

Contract Documents – means the following items and documents in descending order of precedence executed by the Owner and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Contract, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

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, special inspections, and related items. The Cost of the Work shall not include the CM@Risk’s Construction Fee, General Conditions Cost, materials testing, governmental or tribal agency permits and fees, or taxes.

Critical Path Method – A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities

which represent the longest time required to complete the project. Delay in completion of the identified activities will cause a delay in achieving Substantial Completion.

Day(s) – means calendar days 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 Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor Selection Plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional – Means a licensed design professional who furnishes design, construction documents, and/or construction administration services required for the Project.

Drawings (Plans) – 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 Design Professional and the Owner. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at schematic, design development, construction documents), but “*not for construction*”. Shop Drawings are not Drawings as so defined.

Final Completion – means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner’s Project specifications and Owner training/start up and commissioning activities.

Float – Means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

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 CM@Risk for work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working at the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); costs of offices and temporary facilities setup solely for this project including office materials, office supplies, office equipment and minor expenses; cost of utilities, fuel, sanitary facilities and telephone services at the site; costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants working at the site during construction on behalf of the CM@Risk or Subcontractors not in their direct employ; and fees for licences.

Guaranteed Maximum Price (GMP) – Means the sum of the maximum Cost of the Work; the Construction Fee, General Conditions Costs, taxes, and CM@Risk Contingency.

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

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk submitted in the prescribed format 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 Article 2 of this Contract.

Legal Requirements means all applicable federal, state, tribal, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

Notice to Proceed or "NTP" means the directive issued by the Owner, authorizing the CM@Risk to start Work and fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Owner (Owner)— means Apache County with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

Owner's Representative – Means the designated Owner Project Manager.

Owner's Senior Representative – Means J. Ferrin Crosby, PE, or such other person as may be designated by the Board of Supervisors.

Project – Means the work to be completed in the execution of this Contract as amended and as described in the Recitals above and in Exhibit A attached.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, Owner's Senior Representative, Owner's Project Manager, and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – A statement furnished by the CM@Risk to the Owner's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating the CM@Risk's periodic Application and Certificate for Payment.

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

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

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

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

Subcontractor – An individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the Preconstruction services or construction phase Work at the site for which the CM@Risk is responsible.

Subcontractor Selection Plan – The plan prepared by the CM@Risk outlining the intended approach for selecting subcontractors for the Project. Subcontractors shall be selected on a combination of qualifications and price.

Submittals – Means documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Contract by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

Substantial Completion – Means the established date when the Work or an agreed upon portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. Requirements for Substantial Completion may include, but are not limited to: Approval by the Owner or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); all systems in place, functional, and displayed to, and accepted by, the Owner or it's representative; Owner operation and maintenance training complete; HVAC test and balance completed with reports provided to the Design Professional for review; Operational and Maintenance manuals and final Project Record Documents reviewed and accepted b the Owner and Design Professional; landscaping and site work complete; and final cleaning complete.

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.

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

ARTICLE 2 – BASIC PRE-CONSTRUCTION SERVICES

2.1 GENERAL

- 2.1.1 The CM@Risk, to further the interests of the Owner, will perform the services required by, and in accordance with this Contract, to the satisfaction of the Owner, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Northeastern Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted CM@Risk and construction contracting practice.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the Owner and Design Professional a written evaluation of the Owner's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, design meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM@Risk will provide Preconstruction 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 Owner in writing whenever 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 estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the Owner, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane 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 apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk shall prepare a Construction Management Plan (CMP), which shall include the CM@Risk's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix describing in general terms each Project Team member's role.
- 2.2.2 The CM@Risk shall 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 shall take into account (a) revisions in Drawings and Specifications; (b) 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 condition, whether obtained by the Owner, Design Professional 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 if 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 Owner.

2.3 PROJECT MASTER SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Master Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Master Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Master Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Master Schedule will be consistent with the most recent revised/updated CMP. The Project Master Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the Owner. The CM@Risk will use P3 or Suretrak software to develop the Project Master Schedule. The Project Master Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Master Schedule will indicate milestone dates for the phases once determined.
- 2.3.2. The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.
- 2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

- 2.3.2.4 The CPM diagram schedule shall be based upon activities which would coincide with the schedule of values.
- 2.3.2.5 The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on the information set forth on the Eagar Arizona Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto; or alternatively by another standard table if approved by Owner. (See 4.5.5.7 of Construction Contract)
- 2.3.3 The Project Schedule shall consider the Owner's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
- 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the Owner or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
- 2.3.4.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
- 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that Owner-caused delays on the Project may be offset by Owner-caused time savings (i.e., critical path Submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes 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 with such Submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. (See 2.6.6 and 2.6.6.1)
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the Owner and Design Professional approve, the CM@Risk will 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 such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Master Schedule.
- 2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various design phases. 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 furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 2.4.4 The CM@Risk will conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team and at a minimum as scheduled and identified by milestones in the Project Master Schedule required in Article 2.3 above. 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.
- 2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) 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.
- 2.4.4.2 Bidability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to eliminate ambiguity and scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.

- 2.4.4.3 The results of the reviews will be provided to the Owner in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the Owner, the CM@Risk will meet with the Owner and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, 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 or the design are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and Owner in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance of the design and the Construction Documents with applicable laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, 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 Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, the CM@Risk shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the Owner will make the final determination.
- 2.5.2 If any estimate submitted to the Owner exceeds previously accepted estimates or the Owner's Project budget, the CM@Risk shall make appropriate recommendations on methods and materials to the Owner and Design Professional that he believes will bring the project back into the Project budget.
- 2.5.3 In between these milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the Owner and Design Professional informed as to the major trend changes in costs relative to the Owner's budget.
- 2.5.4 When requested by the Owner, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the Owner (see Exhibit "C" attached). The Owner may request a GMP Proposal for all or any portion of the Project and at any time following completion of design development documents. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate 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. The CM@Risk guarantees to complete the Project at or less than the final approved GMP Proposal amount, plus approved Change Orders, and agrees that it will be responsible to fund any increase in the actual cost of the Work above that amount.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 2.6.2.3 CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the Owner and at the Owner's sole discretion for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so all applicable markups will be applied at the time of GMP submission.
- 2.6.2.4 Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.
- 2.6.2.5 The GMP shall not include the cost of governmental permits, fees, and licenses, or testing and inspection of construction materials as may be required by construction codes or generally accepted industry practice. Contractor shall obtain and make initial payment for all permits, fees, and licenses, and shall obtain, manage, and make initial payment for testing and inspection services. Upon receipt of separate invoice accompanied by copies of permits, reports, invoices and/or other applicable documentation, District will directly reimburse Contractor for payments to issuing agencies or testing and inspection services.
- 2.6.3 Owner's Contingency are funds to be used at the sole discretion of the Owner. Owner's Contingency will be added to the Contract Price by Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. At the time that Owner's Contingency is used, the appropriate markups will be applied.
- 2.6.4 GMP amendments are cumulative except for the CM@Risk's Contingency. The amount of the CM@Risk's Contingency for each GMP will be negotiated separately.
- 2.6.5 The CM@Risk, in preparing any GMP Proposal, will obtain from the Design Professional, at the expense of the CM@Risk, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CM@Risk will prepare its GMP in accordance with the Owner's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. The CM@Risk will send one set of those documents to the Owner's Representative, keep one set and return the third set to the Design Professional.

2.6.6 An updated/revised Project Master Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Master Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.

2.6.6.1 The Project Master Schedule required above shall include a preliminary Construction Schedule developed in a Critical Path Method (CPM) with the first requested GMP. If subsequent GMP's are requested, the CM@Risk shall include an updated CPM Construction Schedule with their GMP submittal.

2.6.7 GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to Owner.

2.6.8 GMP Proposal(s) Review and Approval

2.6.8.1 The Owner may request a GMP from the CM@Risk at any time following the completion of Design Development documents. It is the Owner's expectation that the GMP shall not exceed the Owner stated Project budget.

2.6.8.2 The CM@Risk will meet with the Owner and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the Owner or Design Professional discovers inconsistencies, inaccuracies or confusion in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.

2.6.8.3 The CM@Risk's detailed construction cost estimates and GMP will be reviewed by the Design Professional and the Owner for reasonableness and compatibility with the Owner's Project and the Owner's budget. The CM@Risk shall provide a response to the Design Professionals and Owner's questions and an explanation of differences between the Owner's Project budget and the CM@Risk's construction cost estimate and corresponding GMP. Owner may require that such responses and explanations be submitted in writing. The CM@Risk, Owner and Design Professional shall engage in a mutually agreeable process in an effort to achieve a clearly understood mutually acceptable GMP.

2.6.8.4 In the event that the GMP exceeds the Owner's Project budget, the Owner reserves the right to direct the CM@Risk (and the CM@Risk shall) work in conjunction with the Design Professional to assist in the re-design of the Project as necessary to meet the agreed upon program and the stated Project budget as follows:

- a) After direction from the Owner, the CM@Risk shall coordinate and cooperate with the Project Team to assist the Design Professional in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
- b) The CM@Risk shall develop and provide to the Owner a GMP in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
- c) The CM@Risk shall analyze the Design Professional's original submittal and as altered and redrafted Construction Documents, and make recommendations to the Owner as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the stated Project budget.

Notwithstanding anything in the RFQ or the CM@Risk's response to the contrary, the CM@Risk shall perform the work set forth in this section without additional compensation.

- 2.6.8.5 The Owner upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to a third party for review and verification.
- 2.6.8.6 If the CM@Risk GMP Proposal is greater than the third-party estimate or if the Owner for some other stated reason may desire, the Owner may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the third party's estimate for the cost of Work as part of his GMP, or present a report within seven (7) days of a written request by the Owner for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the Owner may raise. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the Owner.
- 2.6.8.7 If during the review and negotiation of GMP Proposals design changes are required, the Owner will authorize and cause the Design Professional 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 Design Professional and Owner in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- 2.6.8.8 After final submission of the GMP, the Owner may do any of the following:
- a) Accept the CM@Risk original or revised GMP Proposal, if within the Owner's budget, without comment.
 - b) Accept the CM@Risk original or revised GMP Proposal that exceeds the Owner budget, and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
 - c) Reject the CM@Risk original or revised GMP Proposal in which event, the Owner may terminate this contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal
- 2.6.8.9 Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM@Risk shall execute the Owner's specified form of contract to reflect the GMP, and the GMP as approved shall become part of the Construction Services Contract. Within 10 days after execution of the Construction Services contract, the CM@Risk shall provide to the Owner written verification of all insurance required herein and a Performance Bond and a Labor and Material Payment Bond each for 100% of the full Contract price, as set forth in ARS 41-2574.

2.7 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.7.1 The CM@Risk will implement the Subcontractor Selection Plan as submitted in the CMAR's response to the Owner's RFQ, or as otherwise agreed by the Parties, in the evaluation of the qualifications of Subcontractor(s) or Supplier(s) and provide the Owner with its review and recommendation. The CM@Risk shall provide an explanation of the qualifying factors for each selection. The selection plan shall include at a minimum, requesting and evaluating basic qualification information from major Subcontractors and Suppliers. Such information shall be requested on AIA form A305 (Contractor Statement of Qualifications) or other such form approved by the Owner. Additional project or task specific information may be required by the Owner to establish the Subcontractor's/Supplier's experience and ability. The final Subcontractor Selection Plan shall comply with ARS 41-2578 and shall be a part of this agreement by reference.
- 2.7.2 The CM@Risk will disseminate information as to the availability of plans and specifications as set forth in the CM@Risk's Subcontractor Selection Plan, as appropriate, or as specifically requested by the Owner. The CM@Risk shall conduct Pre-Bid conferences with prospective Subcontractors and

Suppliers. The CM@Risk shall notify the Owner of each such Pre-bid conference and unless specifically authorized in writing by the Owner's Representative, shall not hold any such meeting outside the presence of the Owner.

- 2.7.3 If the CM@Risk is to self-perform any Work the CM@Risk must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The CM@Risk must further provide documentation to demonstrate that for any work that is self-performed, the cost of any such work is a reasonable and prudent use of public funds. The Owner must approve the CM@Risk self-performance of any part of the work and the cost therefore prior to accepting the GMP proposal.
- 2.7.4 CM@Risk shall obtain from selected and approved Subcontractors or Suppliers a Schedule of Values with their bid proposals. Such Schedule of Values will be used to create the overall Project Schedule of Values.
- 2.7.5 The CM@Risk is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.
- 2.7.6 The CM@Risk is solely responsible for the performance of the selected Subcontractors or Suppliers

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The Preconstruction services described in this Contract will be performed by CM@Risk in accordance with the most current updated/revised Project Master Schedule. Failure on the part of the CM@Risk to adhere to the Project Master Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the Owner.
 - 3.1.1 Upon failure to adhere to the approved schedule, Owner may provide written notice to CM@Risk that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the Owner, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal Owner holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 4:00 p.m. on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 The Owner will pay the CM@Risk a lump-sum fee of \$5,000.00 (Five thousand dollars) for all CM@Risk services described in or reasonably inferable from this Contract.

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for Preconstruction services will be submitted on an AIA Form G702 or equivalent form approved by Owner and will be accompanied by a progress report and a current Project Master Schedule and Schedule of Values. Detailed invoices and receipts shall be attached if requested by Owner. Any requests for payment will include, at a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables

submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

- 4.2.2 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the Owner. In no event will the Owner pay more than 90 percent of the Contract Amount until final acceptance of the all Preconstruction services, and award of the final approved GMP for the entire Project by Owner.
- 4.2.3 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the Owner during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the Owner of any of its legal rights herein.
- 4.2.4 No compensation to the CM@Risk will be allowed contrary to the Arizona Revised Statutes.
- 4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL PRECONSTRUCTION SERVICES

- 4.3.1 CM@Risk may be required to provide services in excess of those expressly set forth in Article 2. Any additional services must be requested by the Owner, in writing, prior to the delivery of said services. Mark-ups are not authorized unless pre-approved by Owner in writing, prior to the delivery of said services. Reimbursables are not authorized unless pre-approved by Owner in writing. There shall be no payment by Owner for any additional services provided prior to or without the written request of the Owner for said services.
- 4.3.2 The fees for the CM@Risk and any Subconsultants for any additional preconstruction services will be based upon the hourly rate schedule included as Exhibit B attached.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

- 5.1 The Owner, at no cost to the CM@Risk, will furnish the following information:
 - 5.1.1 One copy of data the Owner determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the person designated to be the Owner's representative during the term of this Contract. The Owner's Representative has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the Owner on any aspect of the work or Deliverables will be directed to the Owner's Representative.

- 5.2 The Owner additionally will:
- 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional 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 Owner and Design Professional.
 - 5.2.2 Supply, without charge, a copy of programs, reports, drawings, and specifications in its possession or control and reasonably required by the CM@Risk.
 - 5.2.3 Provide the CM@Risk with information in its possession or control regarding the Owner's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM@Risk when the Owner becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the Owner may provide written notice to CM@Risk that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven days of CM@Risk's receipt of such notice.
 - 5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.
- 5.3 The Owner's Representative will have authority to approve the Project Budget and Project Master Schedule, and render decisions and furnish information the Owner's Representative deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 Owner Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the Owner and are to be delivered to the Owner's Representative before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the Owner agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the Owner's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk.
- 6.1.3 License to Owner for Reasonable Use: The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the Owner, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works

require the Owner to alter or modify the Project Documents, then paragraph 6.1.1 applies.

- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other Preconstruction Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the Owner by willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Arizona would exercise under similar conditions. The fact that the Owner has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its 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 Contract to the Owner. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the design architect.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 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, cost of performance, or Project Master Schedule, the work or Deliverable will nonetheless be performed as directed by the Owner. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the Owner and the CM@Risk. Such Change Order or Amendment will not be effective until approved by the Owner.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the Owner 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 first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be 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.

6.4 DATA CONFIDENTIALITY

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

the Owner, may remain in the custody of the CM@Risk, however copies of all such data shall be provided to Owner as a condition precedent to final payment.

- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the Owner. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
- 6.4.3.1 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 Owner;
- 6.4.3.2 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
- 6.4.3.3 Data which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the Owner, the CM@Risk will first notify the Owner as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the Owner sufficient facts, such that the Owner can have a meaningful opportunity to either first give its consent or take such action that the Owner may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the Owner, will promptly deliver, as set forth in this section, a copy of all data to the Owner. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the Owner if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Within ten days of the date of this Contract, the CM@Risk will submit to the Owner an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the Owner's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the Owner 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 Owner for prior approval. Key personnel will include, 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.
- 6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the Owner, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the Owner objects, with reasonable cause, to any

of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the Owner and, if required, remove such personnel from the Project and replace with new personnel acceptable to the Owner.

6.6 INDEPENDENT CONTRACTOR

6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the Owner 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 to give the Owner the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

6.7.1 Within ten days of the date of this Contract, the CM@Risk will furnish the Owner for approval the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the Owner.

6.8 TERMINATION

6.8.1 The Owner and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the Owner reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.

6.8.2 In the event the Owner abandons any or all of the services or any part of the services as herein provided, the Owner will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the Owner all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the Owner.

6.8.4 The CM@Risk will appraise the work completed and submit an appraisal to the Owner for evaluation. The Owner will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

6.8.5 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable direct costs and direct expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CM@Risk and the Owner. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". There shall be no compensation for "lost profit" or for work or services not performed. The Owner will make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTE AVOIDANCE AND RESOLUTION

- 6.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 6.9.2 CM@Risk and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and Owner's Representative.
- 6.9.3 If a dispute or disagreement cannot be resolved through CM@Risk's Representative and Owner's Representative, CM@Risk's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 6.9.4 In signing this Contract, Contractor agrees that any cause Contractor may have against the Apache County and its Board of Supervisors arising in relation to this Procurement and Project, including but not limited to, contract claims and controversies, including claims related to assignees of Contractor, shall be resolved exclusively through the procedures of the State of Arizona.
- 6.9.5 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Contract must be filed in the Apache County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Contract, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

6.10 WITHHOLDING PAYMENT

- 6.10.1 The Owner reserves the right to withhold funds from the Owner's progress payments up to the amount equal to the claims the Owner may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the Owner and CM@Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The Owner, its authorized representative, and/or the appropriate 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 Change Orders. The Owner reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the Owner, its authorized representative, and/or the appropriate agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The Owner 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 Owner to audit their records to verify the

accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

6.12.1 To the fullest extent permitted by law, the CM@Risk agrees to defend, indemnify and hold harmless the Owner, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies.

6.13 NOTICES

6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Contract by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To Owner:	Apache County J. Ferrin Crosby, PE Apache County Engineer
To CM@Risk	Nicoll Construction
Copy to Project Mgr.	Torrison Consulting LLC Michael Torrison
Copy to Design Professional (if applicable)	Historic Streetscapes PLLC Ron Peters

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

6.14.1 The CM@Risk will comply with the provisions of this Contract pertaining to discrimination and accepting applications or hiring employees, subject to any applicable Arizona law. The CM@Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The

CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these and all laws in performing this Contract and to permit the Owner to verify such compliance.

6.16 CONFLICT OF INTEREST

6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the Owner, 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 Owner. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

Apache County Engineering Department
c/o J. Ferrin Crosby, PE - Apache County Engineer
75 West Cleveland - P.O. Box 238
St. Johns, AZ 85936

6.16.2 Actions considered to be adverse to the Owner under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the Owner;
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the Owner; and
- (c) 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 Owner.

6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the Owner, 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 Owner.

6.16.4 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.

6.17 CONTRACTOR'S LICENSE

6.17.1 Prior to award of the Contract, the CM@Risk must provide to the Owner its Contractor's License Classification and number and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

6.18.1 The Owner and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal

representatives of such other party in respect to all covenants of this Contract. Neither the Owner nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the Owner.

6.19 FORCE MAJEURE

- 6.19.1 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 will be excused, 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.

6.20 COVENANT AGAINST CONTINGENT FEES

- 6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Board of Supervisors, or any employee of the Owner, has any interest, financially, or otherwise, in the firm. The Owner will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

- 6.21.1 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 hereof will not be construed to be 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.

6.22 JURISDICTION

- 6.22.1 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, Apache County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

6.23 SURVIVAL

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

6.24 MODIFICATION

- 6.24.1 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.

6.25 SEVERABILITY

6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

6.26.1 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.

6.27 TIME IS OF THE ESSENCE

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

6.28 THIRD PARTY BENEFICIARY

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

6.29 COOPERATION AND FURTHER DOCUMENTATION

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

6.30 CONFLICT IN LANGUAGE

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

6.31 OWNER'S RIGHT OF CANCELLATION

6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the Owner pursuant to applicable provisions of the Arizona Revised Statutes and the Arizona Administrative Code.

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the Owner.

ARTICLE 7 - INSURANCE

The CM@Risk will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables hereunder by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the Preconstruction or during the construction phase will be defined in a separate contract associated with the construction phase. The CM@Risk will cause all Subcontracts to contain identical terms and conditions to those included in this Article.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Contract by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@Risk is free to purchase such additional insurance as it may determine necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage. (Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate/per project	\$2,000,000/\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 100,000

7.1.1.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles (Form CA 0001, ed 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
---	-------------

7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability:	
Each Accident	\$ 500,000
Disease-Policy Limit	\$ 500,000
Disease-Each Employee	\$ 500,000

7.1.2 Self-Insured Retentions Any self-insured retentions and deductibles greater than \$10,000 must be declared to and approved by the Owner.

7.2 OTHER INSURANCE REQUIREMENTS

- 7.2.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
- 7.2.1.1 The Owner, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of the CM@Risk, including the Owner's general supervision of the CM@Risk; products and completed operations of the CM@Risk; and automobiles owned, leased, hired or borrowed by the CM@Risk.
- 7.2.1.2 The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or underground hazard ("EXU").
- 7.2.1.3 The Owner, its officers, officials, agents, and employees will be additional insureds to the full limits of liability purchased by the CM@Risk, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85.
- 7.2.2 The CM@Risk's insurance coverage will be primary insurance with respect to the Owner, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the Owner, its officers, officials, agents, and employees will be in excess of the CM@Risk's insurance and will not contribute to it.
- 7.2.3 The CM@Risk's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by the CM@Risk and its Subcontractors will not be limited to the liability assumed under the indemnification provisions of this Contract.
- 7.2.4 The policies will contain a waiver of subrogation against the Owner, its officers, officials, agents, and employees for losses arising from Work performed for the Owner.
- 7.2.5 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the Owner, its officers, officials, agents, and employees for losses arising from work performed for the Owner.

7.3 SUBCONSULTANT INSURANCE

- 7.3.1 CM@Risk's certificate(s) shall include all subcontractors as insureds under its policies. All coverages for subcontractors shall be subject to the minimum requirements identified above.

7.4 NOTICE OF CANCELLATION

- 7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to the Owner's at:

Apache County Engineering Department
c/o J. Ferrin Crosby, PE - Apache County Engineer
75 West Cleveland, P.O. Box 238
St. Johns, AZ 85936

7.5 ACCEPTABILITY OF INSURERS

7.5.1 Insurance is to be placed with insurers duly licensed companies in the State of Arizona, and with an A.M. Best's rating of no less than A-,7, or as approved by the Owner and licensed in the State of Arizona with policies and forms satisfactory to the Owner. The Owner in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

7.6.1 The CM@Risk will furnish the Owner, Certificates of Insurance (ACORD form or equivalent approved by the Owner) with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement(s) that restricts or limits coverages will be clearly noted on the certificate of insurance.

7.6.2 All certificates and endorsements are to be received and approved by the Owner before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or signing of this Contract, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All Certificates of Insurance required by this Contract will be sent directly to the Owner's Senior Representative. The Project Number and Project description will be included on the Certificates of Insurance. The Owner reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Owner, whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized Owner officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____, 2019 which action has been authorized at a legally convened meeting of the Apache County Board of Supervisors.

Apache County
Signed: _____
Printed: Dr. Joe Shirley Jr
Title: Chairman of the Board of Supervisors
Date: _____


Nicoll Construction
Signed: 
Printed: BRIAN NICOLL
Title: MEMBER/MANAGER
Date: 7/17/19

EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the Preconstruction services specified in this Contract are to be performed:

5300sf wood framed single story building, slab on grade for use as a Teen Center with site development to include 20 parking spaces, service area and flatwork, all utility hookups to city services. Building will be totally fire sprinkled.

Items that will be reviewed and possibly included into the GMP, and will be accommodated by the portion of the total Project budget set aside for needs and expenses, are as follows:

Metal roofing; basketball goals; kitchen equipment

CM@Risk Design Phase and Construction Services as necessary and/or as set forth in the Contract Documents for the implementation of the Lodge – Legacy Teen Center, Eagar, Arizona, all as may be more fully set forth in the documents provided pursuant to the Contracts herein.

The full street or physical address of the Project is:

Town of Eagar to provide at plan review

EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants indicated below shall be used in the calculation of fees for additional preconstruction services, if any.

LIST OF CLASSIFICATIONS:

Classification

Total Labor Rate

EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP proposal(s) Submittals; one copy for review, four bound copies will be requested by the Owner’s Project Representative prior to contract execution.

Table of Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values – summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Project Master Schedule
 7. Projection of anticipated permit fees and anticipated costs of testing and inspection services.
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the Owner must be aware of pertaining to the scope.
 2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general condition fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT NAME:

DATE:

GMP Summary			AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)		\$
INDIRECT COSTS			RATE
B.	CM@Risk’s Contingency		% \$
C.	Construction Fee		% \$
D.	General Conditions		% \$
	D1	Payment and Performance Bond	\$ %
	D2	Insurance	\$ %
E.	Taxes		% \$
F. TOTAL GMP			\$
G. Owner’s Contingency			\$

Formulas:

Total GMP: $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F, D/F, and D1/F

(Do not acquire bond or insurance until notified by the Owner’s Project Representative.)

3. Schedule of Values - spreadsheet with the estimated cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. (Date stamped and signed by CM@Risk)
5. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

For questions regarding the submittal requirements, please contact Owner's Project Representative.

Michael Torrison
Torrison Consulting LLC
2079 N. 134th Avenue
Goodyear, Az 85395
602-769-1450