



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CA12-070**

1. Agenda Item Number:

31

2. Council Meeting Date:
January 26, 2012

TO: MAYOR & COUNCIL
THROUGH: CITY MANAGER

3. Date Prepared: January 4, 2012

4. Requesting Department: Information
Technology/City Manager

5. SUBJECT: Award design/preconstruction services for Design/Build contract to Caliente Construction for the IT Building Data Center Cooling Renovation/Expansion Design, Project No. IT1001-410, in an amount not to exceed \$140,672.58.

6. RECOMMENDATION: Staff recommends Council award design/preconstruction services for Design/Build contract to Caliente Construction for the IT Building Data Center Cooling Renovation/Expansion Design, Project No. IT1001-410, in an amount not to exceed \$140,672.58.

7. BACKGROUND/DISCUSSION: The City's existing Data Center is approximately 580 square feet and is located in the former garage bay of the original Fire Station No. 1. The space was converted into Data Center space in 1991 and a used cooling system was moved to the building to provide cooling. This system is estimated to be 25 years old and difficult to maintain due to lack of parts. The City's Data Center needs have also expanded over time requiring additional cooling assistance devices including the installation of 7 wall pack and 3 underfloor AC units just to meet the summertime cooling requirements. These temporary solutions are very inefficient and put the City's entire technology infrastructure at risk for failure and downtime. In addition, the City has outgrown the space set aside for this Data Center and needs to expand the floor space in order to keep up with the computing requirements of all City departments.

The City originally used the APS audit to look at the suitability of this project for American Recovery and Reinvestment Act of 2009 grant funds, but it did not meet the criteria.

Due to the complexity of the need for the Data Center to remain completely operational during the renovation process, there are very few firms with the necessary background and expertise necessary to work in this type of environment. It is also the City's desire to ensure that the contractor is committed to providing a design that meets or exceeds the City's needs, and can be constructed to the design specifications. The City originally issued the requirements as a CM@ Risk project in order to meet this goal. The design portion of the total project is small compared to the construction cost. So the inherent financial risk of a City-wide IT service disruption caused the CM@ Risk design Contractor to object to the City's standard Indemnification and Consequential Damages contract language. This requirement was not acceptable to the shortlisted contractors. Since Design/Build includes all construction aspects, the liability risk is acceptable to the selected contractor. It was then determined that, due to the highly specialized nature of this project and the high risk to multiple City departments, it was in the City's best interests to pursue this project as a Design/Build construction contract.

The contractor shall provide design/preconstruction services for an existing 580 square foot computer room plus a 350 square foot expansion of the Data Center.

A separate construction contract to Caliente Construction will be brought forward for Council approval at a later date.

8. EVALUATION: The City selection process was followed in accordance with State law for selecting design and construction services. Nine (9) Statements of Qualifications were received from qualified firms on May 5, 2011. The Selection Committee included the following members:

- Patrick Hait, IT Infrastructure Manager, Diane Jimro, IT Senior Management Assistant
- Andy Sandoval, IT Principal Systems Specialist, Russell Slotnick, Engineering Project Manager
- Bill Fay P.E., Public Works Engineer, Larry LaMay, Facilities Management Superintendent
- James Poggemey, Chandler Resident

The Committee held interviews and discussions with Jokake Construction, Caliente Construction, and Bjerk Builders. Caliente Construction was selected based on qualifications, design capability, current workload, and experience, and staff recommends their approval for this contract.

9. FINANCIAL IMPLICATIONS:

Cost: \$140,672.58

Savings: N/A

Long Term Costs: N/A

Fund Source:

Acct. No.:	Fund Name:	Program Name:	CIP Funded:	Amount:
401.1287.6212.6IT058	General Government Capital Program	Data Center Improvement Cooling	Yes	\$140,672.58

10. PROPOSED MOTION: Move that Council award design/preconstruction services for Design/Build contract to Caliente Construction for the IT Building Data Center Cooling Renovation/Expansion Design, Project No. IT1001-410, in an amount not to exceed \$140,672.58, and authorize the Mayor to sign the contract documents.

ATTACHMENTS: Contract, Map

APPROVALS

11. Requesting Department

Patrick Hait

Patrick Hait, IT Infrastructure Manager

13. Department Head

Steven Philbrick

Steven Philbrick, Chief Information Officer

12. City Engineer

Sheina Hughes F2R

Sheina Hughes, City Engineer

14. City Manager

Rich Dlugas

Rich Dlugas

DESIGN-BUILD: AGREEMENT FOR PRE-CONSTRUCTION SERVICES

This Agreement (the "AGREEMENT" or "CONTRACT") is entered into this _____ day of _____, 2012 by and between the CITY OF CHANDLER ("CITY") and Caliente Construction, Inc. ("CONTRACTOR").

RECITALS

WHEREAS, CITY has issued a Request for Qualifications dated April 1, 2011, pursuant to which CITY solicited statements of qualifications to design and construct a project known as Design-Build Services for City of Chandler IT Data Center Cooling Renovations and Expansion Project – Project Number IT1001-410 ("the Project"); and

WHEREAS, CONTRACTOR has represented that it has the expertise and is qualified to perform the services described in accordance with the terms and conditions of this AGREEMENT; and

WHEREAS, CITY has selected CONTRACTOR as the best qualified based on the representations made by CONTRACTOR in the RFQ; and

WHEREAS, Arizona Revised Statutes Section (A.R.S. § 34-605) provides that for design-build construction services, CITY shall enter into a written agreement with the CONTRACTOR for preconstruction services under which CITY shall pay CONTRACTOR a fee for preconstruction services in an amount agreed by CITY and CONTRACTOR prior to requesting or obtaining a fixed price or a guaranteed maximum price for the construction from CONTRACTOR or entering into a construction agreement with CONTRACTOR for the build portion of the design-build services;

WHEREAS, the parties intend this AGREEMENT to set forth the understanding of the parties as to the preconstruction services and preconstruction fee for the Project.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1 ARTICLE ONE – CITY’S GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The City’s General Conditions for Construction Contracts attached to this AGREEMENT on file at the Chandler City Clerk’s Office are incorporated herein by reference, and the parties agree to be bound by all provisions therein except as set forth in this Article of this AGREEMENT. The provisions of the City’s General Conditions for Construction Contracts shall take precedence over any terms and conditions of this AGREEMENT except that because this Project was procured as a Design Build project, Sections 8.5C and 8.5D of the General Conditions for Construction Contracts do not apply to this AGREEMENT. Other Sections of the General Conditions for Construction Contracts which relate solely to construction activities do not apply to this AGREEMENT. For the purposes of this AGREEMENT, references to CONTRACTOR

and to Project Designer in said General Conditions refer to CONTRACTOR herein. In effect, CONTRACTOR is acting as the Project Designer in this AGREEMENT for pre-construction services, and, if subsequently agreed to by CITY and CONTRACTOR, CONTRACTOR and CITY may enter into another agreement pursuant to which CONTRACTOR will act as Contractor as defined in the City's General Conditions for Construction Contracts. For purposes of this AGREEMENT, whether acting as Project Designer or Contractor as defined in the General Conditions for Construction Contracts, Caliente Construction, Inc. shall be referred to as "CONTRACTOR".

2 ARTICLE TWO – SCOPE OF WORK AND RISK ALLOCATION

CITY and CONTRACTOR enter into this AGREEMENT, and CONTRACTOR agrees to provide pre-construction services set forth in Exhibit B, the Scope of Work, attached hereto and incorporated herein by reference and Exhibit B-1, Pre-Construction Phase Responsibility and Risk Allocation Matrix. Exhibit F sets forth Clarifications to the AGREEMENT.

3 ARTICLE THREE – DEFINITIONS

Words used in this AGREEMENT which are defined in CITY's General Conditions for Construction Contracts shall have the meaning ascribed in the General Conditions for Construction Contracts unless otherwise set forth in this AGREEMENT.

4 ARTICLE FOUR – FIDUCIARY RELATIONSHIP; OPEN BOOK; KEY PERSONNEL

- 4.1 Fiduciary Responsibility. CONTRACTOR is CITY's fiduciary responsible for undertaking all necessary action contemplated under the Contract Documents to design and, if mutually agreed between the parties in a subsequent agreement, construct the City of Chandler IT Data Center Cooling Renovations and Expansion Project – Project Number IT1001-410 ("the Project") and ensure timely and quality completion of the project at a cost within the Guaranteed Maximum Price (GMP).
- 4.2 Acceptance and Limitation. CONTRACTOR accepts the fiduciary relationship established between it and CITY by this AGREEMENT. CONTRACTOR agrees to furnish the design, engineering and, if agreed in a subsequent agreement, construction services for the City of Chandler IT Data Center Cooling Renovations and Expansion Project – Project Number IT1001-410 (the Project). CONTRACTOR further agrees to furnish efficient business administration and superintendence, and to complete the services set forth in this AGREEMENT in the most expeditious and economical manner consistent with providing CITY with the best value and in the best interest of CITY.

- 4.3 Open Book. This project is an “open book” project. CITY is entitled to attend any and all meetings directly or indirectly related to the Project, and CITY shall have access to any and all records of CONTRACTOR or maintained by CONTRACTOR relating to the Project.
- 4.4 Key Personnel. CONTRACTOR’s Team and Key Personnel are set forth in Exhibit D. This AGREEMENT has been awarded to CONTRACTOR based on its representation that those personnel and consultants submitted as part of its Statement of Qualifications and listed in Exhibit D attached hereto and incorporated herein by reference will perform the portions of the work listed on said Exhibit D. CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by CITY.
- 4.5 License. CONTRACTOR shall assure that the Construction Documents are prepared under the direct responsible charge of an architect or engineer either of which is required to be licensed in the State of Arizona and that the Construction Documents shall be signed and sealed by the architect or engineer.
- 4.6 No Conflicts Among AGREEMENT Documents. CONTRACTOR shall be familiar with City’s Standard Details and Specifications and other relevant CITY regulations. CONTRACTOR shall insure there are no conflicts among the Contract Documents including, but not limited to, CITY’S General Conditions for Construction Contracts, the plans and specifications prepared by CONTRACTOR, any standard details or specifications incorporated herein by reference and any subsequent agreement between the parties relating to this Project.
- 4.7 Verification of Field Conditions. CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to CONTRACTOR while performing pursuant to this AGREEMENT.

ARTICLE FIVE – CONTRACTOR’S RESPONSIBILITIES FOR PRELIMINARY DESIGN-BUILD SERVICES

CONTRACTOR is responsible for the Pre-Construction Services set forth in this AGREEMENT and as more specifically as set forth in 1) Exhibit B attached to this AGREEMENT and incorporated herein by reference, 2) Exhibit B1 attached to this AGREEMENT and incorporated herein by reference, and 3) this Article (FIVE) of the AGREEMENT, which set forth the responsibilities of CITY and CONTRACTOR. This Article, Exhibit B and Exhibit B1 are intended to be congruous and not mutually exclusive.

- 5.1 **CITY’S PROGRAM.** CONTRACTOR shall assist the CITY in the development and preparation of CITY’s Program, which is an initial description of CITY’s objectives. CITY’s Program may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

- 5.2 **PRELIMINARY EVALUATION.** CONTRACTOR shall review the CITY's Program to ascertain the requirements of the Project and shall verify such requirements with the CITY.
- 5.3 **PRELIMINARY ESTIMATE.** CONTRACTOR shall prepare for the CITY's written approval a Preliminary Estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail of the estimate shall reflect the CITY's program and any additional available information. If the Preliminary Estimate exceeds the CITY's budget for the Project, CONTRACTOR shall make at its sole expense appropriate recommendations on methods and materials to CITY that he believes will bring the project back into the Project budget.
- 5.4 **SCHEMATIC DESIGN DOCUMENTS.** CONTRACTOR shall submit for CITY's written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the projects basic elements, scale and their relationship to the Project as a whole. One set of these Documents shall be furnished to CITY. When CONTRACTOR submits the Schematic Design Documents, CONTRACTOR shall identify in writing all materials changes and deviations from the CONTRACTOR's preliminary evaluation, schedule and estimate. CONTRACTOR shall update the Preliminary Schedule and preliminary estimate based on the Schematic Design Documents.

ARTICLE SIX – OWNERSHIP OF DOCUMENTS

- 6.1 Ownership. All documents, including, but not limited to, preliminary designs, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of this AGREEMENT are to be, and shall remain the property of CITY. CONTRACTOR shall furnish CITY, upon its request, originals or reproducible copies of technical specifications and copies of all other documents listed above. CONTRACTOR shall endorse, by the required professional seal, all plans and engineering data furnished by it.
- 6.1 Re-Use Of Documents: The parties agree the documents, drawings, specifications and designs, although the property of CITY, are prepared for this Project and are not intended nor represented by CONTRACTOR to be suitable for re-use for any other project. Any reuse without written verification or adaptation by CONTRACTOR for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.
- 6.2 Subcontractors, Architect/engineer and Consultants: CONTRACTOR shall obtain in writing from its architect/engineer, subcontractors and consultants property rights and rights of use that correspond to the rights given by CONTRACTOR to CITY in this AGREEMENT.

**ARTICLE SEVEN – DATA CONFIDENTIALITY; AUDITS; COMPUTER SYSTEMS;
PROMIS**

7.1 Data Confidentiality: As used in the AGREEMENT, “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 obtained by, or transmitted to the CONTRACTOR, subcontractors or consultants (including architect/engineer) in the performance of this AGREEMENT.

The parties agree that all data, regardless of form including originals, images, and reproductions, prepared by obtained by or transmitted to the CONTRACTOR, subcontractors or consultants (including architect/engineer) in connection with the CONTRACTOR’s or its subcontractors’ performance of this AGREEMENT is confidential and proprietary information belonging to the CITY.

Except as specifically provided in this AGREEMENT, CONTRACTOR, subcontractors or consultants (including architect/engineer) shall not divulge data to any third party without prior written consent of CITY. CONTRACTOR, subcontractors or consultants (including architect/engineer) shall not use the data for any purposes except to perform the services required under this AGREEMENT. These prohibitions shall not apply to the following data provided the CONTRACTOR, subcontractors or consultants (including architect/engineer) have first given the required notice to CITY:

- A. Data which was known to the CONTRACTOR, subcontractors or consultants (including architect/engineer) prior to its performance under this AGREEMENT unless such data was acquired In connection with work performed for the CITY;
- B. Data which was acquired by the CONTRACTOR, subcontractors or consultants (including architect/engineer) in its performance under this AGREEMENT and which was disclosed to the CONTRACTOR, subcontractors or consultants (including architect/engineer) by a third party, who to the best of the CONTRACTOR’s, subcontractors’ or consultants’ (including architect/engineer) knowledge and belief, had the legal right to make such disclosure and the CONTRACTOR, subcontractors or consultants (including architect/engineer) are not otherwise required to hold such data in confidence; or
- C. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the CONTRACTOR, subcontractors or consultants (including architect/engineer) are subject.

7.2 In the event the CONTRACTOR, subcontractors or consultants (including architect/engineer) are required or requested to disclose data to a third party, or any other information to which the CONTRACTOR, subcontractors or consultants (including

architect/engineer) became privy as a result of this or any other contract with the CITY, CONTRACTOR shall first notify CITY as set forth in this Article of the request or demand for the data. CONTRACTOR, subcontractors or consultants (including architect/engineer) shall give the CITY sufficient facts so that CITY can be given an opportunity to first give its consent or take such action that CITY may deem appropriate to protest such data or other information from disclosure.

CONTRACTOR, 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 CITY, the CONTRACTOR subcontractors or consultants (including architect/engineer) shall promptly deliver, as set forth in this Article, a copy of all data to the CITY. All data shall continue to be subject to the confidentiality provisions of this AGREEMENT.

CONTRACTOR, subcontractors or consultants (including architect/engineer) assume all liability for maintain the confidentiality of the data in its possession and agree to compensate the CITY if any of the provisions of this Article are violated by the CONTRACTOR, its employees, agents, subcontractors or consultants (including architect/engineer). Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article shall be deemed to cause irreparable harm that justifies injunctive relief in court. CONTRACTOR agrees that the requirements of this Article shall be incorporated in to all subcontracts entered into by CONTRACTOR relating to the Project. A violation of this Article may result in immediate termination of this AGREEMENT without notice.

- 7.3 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted CITY information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, CONTRACTOR must encrypt and/or password protected electronic files. This includes data saved to laptop computers, computerized devices or removal storage devices.

When personal identifying information, financial account information, or restricted CITY information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by CONTRACTOR, subcontractors or consultants (including architect/engineer) in connection with this AGREEMENT is believed to have been comprised, CONTRACTOR subcontractors or consultants (including architect/engineer) shall immediately notify the Project Manager and City Engineer. CONTRACTOR agrees to reimburse the CITY for any costs incurred by the CITY to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

CONTRACTOR agrees that the requirements of this Article shall be incorporated into all subcontracts entered into by CONTRACTOR. It is further agreed that a violation of this

Article shall be deemed to cause irreparable harm that justifies injunctive relieve in court. A violation of this Article may result in immediate termination of this AGREEMENT without notice.

CONTRACTOR shall indemnify, defend, save and hold harmless the CITY and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by CONTRACTOR or any of its officers', directors', agents' or employees', subcontractors' or consultants' (including architect/engineer') failure to comply with the requirements of this Article. This indemnity includes any claim arising out of the failure of CONTRACTOR to conform to any federal, state or local law, statutes, ordinance, rule, regulation or court decree.

The obligations of CONTRACTOR subcontractors or consultants (including architect/engineer) under this Article shall survive the termination of this AGREEMENT.

- 7.4 Audit and Records: Records of the CONTRACTOR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between CITY and CONTRACTOR shall be kept on a generally recognized accounting basis. CITY, its authorized representative, and/or the appropriate federal agency, reserves the right to audit the CONTRACTOR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this AGREEMENT and any change orders. CITY reserves the right to decrease AGREEMENT price and/or payments made on this AGREEMENT, if upon audit of the CONTRACTOR's records, the audit discloses the CONTRACTOR has provided false, misleading, or inaccurate cost and pricing data.

CONTRACTOR shall include a similar provision in all of its agreements with subcontractors or consultants (including architect/engineer) providing services under this AGREEMENT to ensure the CITY, its authorized representative, and/or the appropriate federal agency, has access to the subcontracting records to verify the accuracy of cost and pricing data. CITY reserves the right to decrease AGREEMENT price and/or payments made on this AGREEMENT if the above provision is not included in contracts with subcontractors or consultants (including architect/engineer), and one or more subcontractors or consultants (including architect/engineer) does not allow the CITY to audit their records to verify the accuracy and appropriateness of pricing data.

- 7.5 Computer Systems. CONTRACTOR shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of this AGREEMENT.

ARTICLE EIGHT – CITY RESPONSIBILITIES

- 8.1 CITY's general responsibilities pursuant to this AGREEMENT are set forth in this Article and in Exhibit of this AGREEMENT.

- 8.2 CITY shall provide to CONTRACTOR all relevant information for the Project. CITY shall timely review and approve schedules, estimates, Schematic Design documents and other documents provided by this AGREEMENT.
- 8.2 CITY'S ELECTION TO PROCEED. If CITY elects to proceed with the Project beyond the Pre-construction services provided in this AGREEMENT, CITY and CONTRACTOR may enter into an additional agreement for the completion of the design and the construction of the Project. If CITY elects not to proceed with the Project, CITY shall have no further obligations to CONTRACTOR other than the payment of compensation set forth in this AGREEMENT.

ARTICLE NINE – CONTRACT TIME

CONTRACTOR's Services provided pursuant to this Agreement shall commence upon execution of this AGREEMENT and be completed on or about August 31, 2012. Exhibit E attached hereto and incorporated herein by reference outlines the time frame or schedule agreed to by the parties to this AGREEMENT.

ARTICLE TEN – CONTRACT PRICE

CITY shall compensate CONTRACTOR monthly for Pre-Construction Services performed under this Agreement as set forth on Exhibit C but in no event shall the amount paid for the services provided for in this AGREEMENT exceed one hundred forty thousand six hundred seventy two dollars and fifty eight cents (\$140,672.58).

ARTICLE ELEVEN - STANDARD OF CARE FOR DESIGN PROFESSIONAL SERVICES AND CORRECTIONS

- 11.1. Professional services performed pursuant to this AGREEMENT shall performed with the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, the design professional services shall be performed to achieve such standards.

CONTRACTOR shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or completed under its obligation for this Project and shall correct, at its expense, all omissions and acts therein which may be discovered. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the CONTRACTOR. The cost of the design necessary to correct those errors attributable to the CONTRACTOR shall not be reimbursable costs to the CONTRACTOR. Any damage incurred by CITY as a result of additional construction cost caused by such acts or omissions shall not be reimbursed to the CONTRACTOR and shall be the sole liability

of CONTRACTOR. The fact that CITY has accepted or approved CONTRACTOR' S product shall in no way relieve the CONTRACTOR of any of its responsibilities.

- 11.2. Insurance does not limit liability. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the liability for failure to abide by the term of this AGREEMENT. Further, the requirements for insurance under this Agreement are not intended in any way to limit the scope of any indemnity provisions in this Agreement.

ARTICLE TWELVE – INDEMNITY

Indemnification. To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, must defend, indemnify and hold harmless CITY and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the CITY by reason of this Agreement or the services performed under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this AGREEMENT, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

ARTICLE THIRTEEN – INSURANCE REQUIREMENTS

13.1 General Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this Article, with companies possessing a current A.M. Best, Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. With the exception of professional liability policies, policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this AGREEMENT is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this AGREEMENT and may result in termination of this AGREEMENT.

- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of CITY, CITY may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation and Professional Liability required by this AGREEMENT, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this AGREEMENT, CITY, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this AGREEMENT, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR's acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will not be accepted except with permission of the City Attorney.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR's information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this AGREEMENT, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

13.1.1 Proof of Insurance - Certificates of Insurance

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

13.2 Required Coverage

At a minimum, such insurance shall protect CONTRACTOR and CITY from claims of the types set forth in A-J below which may arise out of or result from CONTRACTOR'S performance of services under this AGREEMENT whether such services be by the CONTRACTOR or by a Sub-consultant or Sub-contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR's employees;

- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR's employees;
- D. Claims for damages insured by usual personal injury liability coverage;
- E. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof.
- G. Claims for bodily injury or property damage arising out of completed operations;
- H. Claims involving contractual liability insurance applicable to the CONTRACTOR's obligations under the Indemnification Agreement.
- I. Claims for injury or damages in connection with one's professional services;
- J. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off-loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

13.4 Commercial General Liability - Minimum Coverage Limits:

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

13.5.1 General Liability - Minimum Coverage Limits

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

13.5.2 Worker's Compensation and Employer's Liability

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

13.5.3 Professional Insurance

- | | | |
|----|------------------|-------------|
| A. | Each Occurrence | \$2,000,000 |
| B. | Annual Aggregate | \$2,000,000 |

ARTICLE FOURTEEN – APPLICATION OF LAW, VENUE, JURISDICTION, VENUE AND FEES AND COSTS

- 14.1** Arizona Law. This AGREEMENT shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3** Jurisdiction and Venue. The parties agree that this AGREEMENT is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this AGREEMENT shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 14.4** Fees and Costs. The prevailing party in any adjudicated dispute relating to this AGREEMENT is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the total amount in controversy unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

ARTICLE FIFTEEN – STATUS OF CONTRACTOR

- 15.1** CONTRACTOR represents and warrants to CITY, in addition to the other representations and warranties contained in this AGREEMENT and as an inducement to CITY to execute this AGREEMENT, which representations and warranties shall survive the execution and delivery of this AGREEMENT and the Final Completion of the Work, as follows:
- 15.2** Financial Solvency: CONTRACTOR is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services provided and performed under this AGREEMENT;

- 15.3** Competency: CONTRACTOR represents that it is experienced, properly qualified, registered and licensed to perform the services provided for pursuant to this AGREEMENT. CONTRACTOR further represents that any subcontractors hired by CONTRACTOR will also meet the requirements of this Article. CONTRACTOR is able to complete its performance obligations under this AGREEMENT and has sufficient experience and competence to do so;
- 15.4** State License: CONTRACTOR is authorized to do business in the state where the Project is located and is properly licensed by all necessary governmental and public and quasi-Project; and
- 15.5** Authority: That CONTRACTOR'S execution and performance of this AGREEMENT is within its duly authorized powers.

ARTICLE SIXTEEN – COMPLIANCE WITH ARIZONA PROCUREMENT LAW

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, CONTRACTOR hereby warrants to CITY that CONTRACTOR and each of its SUBCONTRACTORS will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (“Contractor Immigration Warranty”; Attached hereto as Exhibit A).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

CITY retains the legal right to inspect the papers of any CONTRACTOR or subcontractor's employees who work on this Contract to ensure that the CONTRACTOR or subcontractor is complying with the Contractor Immigration Warranty. CONTRACTOR agrees to assist CITY in the conduct of any such inspections.

CITY may, at its sole discretion, conduct random verifications of the employment records of the CONTRACTOR and subcontractors to ensure compliance with Contractor Immigration Warranty. CONTRACTOR agrees to assist the CITY in performing any such random verifications.

The provisions of this Article must be included in any contract CONTRACTOR enters into with any and all of its CONTRACTORS who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a CONTRACTOR or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Sudan.”

ARTICLE SEVENTEEN - COMPLIANCE WITH FEDERAL LAW

Compliance with Federal Laws Required. CONTRACTOR understands and acknowledges the applicability for the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act to CONTRACTOR. CONTRACTOR agrees to comply with these Federal Laws in performing under the AGREEMENT and to permit CITY inspection of his personnel records to verify such compliance.

ARTICLE EIGHTEEN - NOTICE PROVISIONS

Unless otherwise provided, any notice, request, instruction or other document to be given under this AGREEMENT 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 prepare, return receipt (b) confirmed delivery by hand or standard overnight mail or (c) upon expiration of three (3) business days after the day mailed by certified mail as follows:

To CONTRACTOR (Caliente Construction, Inc.):

Kris Geltch
242 S. El Dorado Circle
Mesa, AZ 85202
(480) 894-5500

To CITY:

Russell Slotnick
215 E. Buffalo St
Chandler, AZ 85225
(480) 215-9261

or to such other place and with such other copies as either CITY or CONTRACTOR may designate as to itself by written notice to the other party to the AGREEMENT. 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.

ARTICLE NINETEEN - AMENDMENTS

Whenever a change in the scope of work contemplated in this AGREEMENT is determined to be necessary, the work will be performed in accordance with the AGREEMENT provided, however, that before such work is started a Contract Amendment shall be executed by CITY and CONTRACTOR. Additions to, modifications of, or deletions from the project provided herein may be made and the compensation to be paid to the CONTRACTOR may be adjusted accordingly by mutual agreement of the contracting parties. It is agreed that no claim for extra

work by CONTRACTOR will be allowed by CITY except as provided herein, nor shall CONTRACTOR do any work not covered by this AGREEMENT unless such work is authorized through an executed amendment executed by authorized representatives of the parties.

ARTICLE TWENTY - TERMINATION WITHOUT CAUSE

CITY may at any time and for any or no reason at its convenience terminate this AGREEMENT or any part of the services to be rendered pursuant thereto by written notice to CONTRACTOR specifying the termination date. Immediately after receiving such notice, CONTRACTOR shall discontinue advancing the work under this AGREEMENT and shall deliver to CITY all drawings, notes calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY.

CONTRACTOR shall receive as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of CONTRACTORs(s) fee described in this AGREEMENT under and shall be in the amount to be agreed mutually by CONTRACTOR and CITY. CITY shall make this final payment within sixty (60) days after CONTRACTOR has delivered the last of the partially completed items.

ARTICLE TWENTY-ONE -- TERMINATION FOR CAUSE

This AGREEMENT may be terminated by CITY for cause should the CONTRACTOR fail to perform any provision of this AGREEMENT, including without limitation, for any of the following reasons:

- (a) CONTRACTOR abandons the Project;
- (b) CONTRACTOR assigns or attempts to assign its rights or obligations under this AGREEMENT or any part thereof to any third-party without the prior written consent of CITY;
- (c) CONTRACTOR is adjudged bankrupt or insolvent, makes a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- (d) CONTRACTOR fails or refuses to perform any obligation under this AGREEMENT, or fails to remedy such nonperformance within sevenB-1B(7) days after its occurrence;
- (e) CONTRACTOR fails to comply with any applicable laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
- (f) CONTRACTOR fails to achieve the required dates for performance required pursuant to this AGREEMENT.

CITY's right of termination for cause as set forth herein shall be in addition to, and not a limitation of, any and all other remedies available to CITY at law, in equity, or under the terms and provision of this AGREEMENT including the City's right to terminate without cause as set forth above.

ARTICLE TWENTY-TWO -- NO KICK-BACK CERTIFICATION

CONTRACTOR warrants that no person has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or

contingent fee; and that no member of the Chandler City Council or any employee of CITY has any interest, financially or otherwise, in the CONTRACTOR'S business.

ARTICLE TWENTY-THREE -- CONFLICT OF INTEREST

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

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

ARTICLE TWENTY-FOUR -- CONTROLLING LAW

The law of the state of Arizona shall govern this AGREEMENT.

IN WITNESS WHEREOF, the parties have hereto have executed this AGREEMENT on this _____ day of _____, 20__.

CITY OF CHANDLER

By: _____
Mayor/Authorized Staff

APPROVED AS FORM:

City Attorney by _____

ATTEST:

City Clerk

CALIENTE CONSTRUCTION, INC.,

By: _____
Signature
Print Name: Lorraine Bergman
Title: President/CEO

ATTEST: (If corporation)

Secretary

WITNESS (If Individual or Partnership)

SEAL

EXHIBIT A

Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract

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

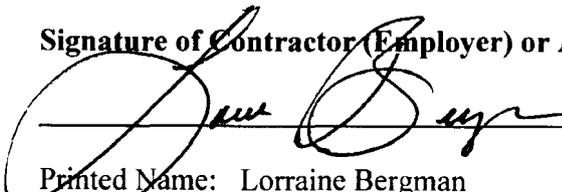
By completing and signing this form and attached Employee Verification Worksheet the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Project Number/Division: Project Number IT1001-410
Contractor Name (as listed in the contract): Caliente Construction, Inc.
Street Name and Number: 242 S. El Dorado Circle
City: Mesa State: AZ Zip Code: 85202

I hereby attest that:

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

Signature of Contractor (Employer) or Authorized Staff:


Printed Name: Lorraine Bergman

Title: President/CEO

Date (month/day/year): January 17, 2012

EXHIBIT B – PROJECT DESCRIPTION

Design and permitting of an air conditioning system for existing +580 square foot computer room and ± 350 square foot expansion of the IT Data Center 275 E. Buffalo, Street, Chandler, Arizona. The expansion and cooling improvements may include, but are not limited to areas within and surrounding the existing building, adjacent buildings, and across Delaware Street. CONTRACTOR shall eliminate down time of data center and maintain full operation of data center during construction.

Existing Conditions and Constraints for Project Design:

- Location of existing Data Center is a fire station apparatus bay, converted in November 1999.
- New clean agent fire suppression system installed in existing Data Center in February 2010.
- Existing Data Center currently serviced by two 7.5 ton 15-year old air conditioning units mounted above the ceiling, five 3-ton wall-mounted air conditioning units, and three 5-ton floor units.
- Central Plant located in basement of the Administration Building with redundant pumps provides chilled water for the IT and Administration building. The plant capacity is 400 GPM of a chilled water of which 100 GPM is available for IT at peak flow.
- There is an existing 600kw diesel generator and smaller 100kw generator for emergency lighting and specific standby loads located next to planning and Development that can be utilized in backup of the cooling options.
- There is limited space for cooling system inside and outside of the IT building.
- No equipment shall be permitted to be installed on the Data Center roof.
- Existing communication manholes located on outside south of the IT building shall remain fully accessible at all times.
- The Data Center operates 24 hours a day 7 days a week. Minimal to no downtime of Data center operations shall be allowed during construction.
- The existing raised floor has a maximum of 10.5 inches clearance from floor to top of raised tile.
- Ceiling height of existing Data Center and expansion area vary from one another.

The pre-construction services may include, but are not limited to, special systems, mechanical, plumbing, electrical, architectural, structural, landscape, civil, fire protection, geotechnical, and deliverables necessary to complete the project tasks as described below:

Task 1: Preliminary Research, Utility/Agency Coordination, and Programming

1. Perform document search and obtain all available utility as-builts, rights-of-way, survey ties and benchmarks, geotechnical and other reports and investigations, master plans, computer

model data, field surveys, and City policies, regulations, standards, design manuals, and requirements, etc. relevant to project.

2. The design should accommodate for high density cooling for existing systems and future growth. Cooling should also allow for adequate cooling for staff working in the area.
3. As required, coordinate with utility companies and agencies in accordance with latest version of the “Public Improvement Project Guide” (PIPG) and identify utility conflicts and mitigation measure. Coordinate design and installation of utilities, which includes, but is not limited to services for electric, communication, water storm drainage, irrigation and sanitary system, etc. Coordination includes submittal of plans, specifications, and design calculations to utilities/agencies for review and use during their design for their service improvements or any necessary relocation. Design coordination also includes incorporation of utility/agency requirements, designs, and specifications into project plans. Conduct and coordinate utility meetings, new services, relocations, and schedules.
4. Prepare project Program including establishment of construction budget within project budget, perform site visits/surveys, information gathering meetings, and prepare schedule; Define final project building system needs, space needs, project requirements, amenities, and sizes. Scope may also include but not be limited to, outside air economizer, ongoing monitoring and leak detection.

Task 2: 50% Design Development:

1. Facilitate discussion and document meeting information exchange with any stakeholders, City or otherwise. Solution should be modeled after the existing City Hall Data Center.
2. Incorporate comments and prepare final schematic and preliminary site plan design using City benchmarks and design criteria. Conduct and submit for Pre-technical review by City including thorough Design-Builder review.
3. Incorporate review comments and prepare 50% plans, elevations, sections, schedules and notes, and outline specifications to describe the project as to civil, architectural, structural, structural, mechanical, electrical, and special systems. Perform code and standards compliance review, quality assurance and quality control review (QA/QC), and value engineering cooperatively with project team. Identify all necessary improvements such as: streets, utilities, landscaping and irrigation drainage, etc.
4. Submit hardcopy and electronic 50% plans, specifications, and cost estimate sets with applicable drainage, geotechnical, and structural calculations for City and utility/agency review.
5. Submit cost estimate for 50% plans. Assist City in evaluation of “substitutions and/or equals, and make recommendations to accept or decline.
6. Attend and lead Public Information and City meetings. This includes preparing exhibits, delivering presentations, facilitate discussions and documenting meeting information exchange.

Task 3: 90% Design Development:

1. Conduct plan reviews and design resolution meetings, incorporate comments, and prepare 90% plans, specifications, cost estimate, and applicable design calculations and reports. Perform Value Engineering with project team and re-design as necessary to re-align project with project budget. Facilitate discussion and document information exchange.

2. Perform and prepare Computational Fluid/Flow Dynamics (CFD) and show efficiencies for current equipment load and future loads.
3. Prepare, provide, and submit hardcopy and electronic copy 90% plans, specifications, and estimate.
4. Prepare and provide color and finishes samples.
5. Assist City in evaluation of “substitutions and/or equals, and make recommendations to accept or decline.

Task 4: 100% Construction Documents

1. Submit 100% constructible and permit construction plans, specifications, and GMP. Submit final construction transition interim plans.
2. Submit final Guaranteed Maximum Price (GMP) and schedule for construction. Assist City in evaluation of “substitutions and/or equals: and make recommendations to accept or decline.

EXHIBIT B-1

**PRE-CONSTRUCTION PHASE RESPONSIBILITY AND RISK ALLOCATION
MATRIX**

PRE-CONSTRUCTION RESPONSIBILITY AND RISKS	OWNER	CONTRACTOR
PRE DESIGN		
Evaluation of existing data center		X
Determine loads on current computers in current data center		X
Written analysis of electrical system to evaluate suitability for use in supporting suitability for use in expanded data center including normal, emergency, and standby system power availability		X
Written CFD analysis to determine if the HVAC units will properly cool the room and deliver sufficient air to the computer racks. <ol style="list-style-type: none"> 1. <u>Formulate the Flow Problem</u> 2. <u>Model the Geometry and Flow Domain</u> 3. <u>Establish the Boundary and Initial Conditions</u> 4. <u>Generate the Grid</u> 5. <u>Establish the Simulation Strategy</u> 6. <u>Establish the Input Parameters and Files</u> 7. <u>Perform the Simulation</u> 8. <u>Monitor the Simulation for Completion</u> 9. <u>Post-process the Simulation to get the Results</u> 10. <u>Make Comparisons of the Results</u> 11. <u>Repeat the Process to Examine Sensitivities</u> 12. <u>Document</u> 		X
PRE-CONSTRUCTION RESPONSIBILITY AND RISKS	OWNER	CONTRACTOR
SCOPE; PROJECT DEFINITION; SCHEDULING; PERFORMANCE REQUIREMENTS		
Project objectives	X	

Definition of Scope	X	
Organize Project by delineating time frames for design development at various stages of Project		X
Outline major design milestones, including pre-design, preliminary estimate and updates, preliminary evaluation, time for obtaining all government or utility permits		X
Establish completion dates for generations of plan development		X
Establishing Performance Requirements	X	X
PRELIMINARY ESTIMATE AND REGULAR UPDATES		
CONTRACTOR shall prepare for CITY'S written approval a preliminary estimate using area, volume or similar conceptual estimating techniques		X
Level of detail in estimate shall reflect CITY'S initial objectives for the project		X
Regular updates provided in detailed schedule of values to be used as basis for final construction estimate		X
PRELIMINARY EVALUATION		
If preliminary estimate exceeds CITY'S budget, CONTRACTOR shall make written recommendations to CITY		X
Propose required architectural, civil, structural, mechanical, electrical and other systems for review by CITY to determine most desirable method of achieving CITY's requirements in terms of cost, technology, quality and speed for delivery.		X
Meetings between CITY (maintenance and user staffs) and Caliente to determine growth projections for room and equipment load and trends to adapt to future needs of CITY in terms of the space	X	X
Identify and quantify needs of data center	X	X
PRE-CONSTRUCTION RESPONSIBILITY AND RISKS	OWNER	CONTRACTOR
Set Milestone meetings to address design operations, operations and constructability/value engineering	X	X
Provide information regarding applicable governmental laws, regulations and requirements as relate to Project		X
SCHEMATIC DESIGN DOCUMENTS		
CONTRACTOR shall submit for CITY'S written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation		X
Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the project basic elements, scale and their relationship to the Project		X
Plan Accuracy		X

Design criteria		X
Conformance to design criteria		X
Design review process	X	X
Owner review time	X	
Design quality control		X
Design quality assurance		X
Changes in scope	X	X
Constructability of design		X
Efficiency of design		X
CONTRACTOR shall provide one set of these Documents to CITY		X
With the Schematic Design Documents, CONTRACTOR shall identify in writing all material changes and deviations from CONTRACTOR's preliminary evaluation, schedule and estimate		X

EXHIBIT C

IN NO EVENT AMOUNT PAID BY CITY TO CONTRACTOR FOR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED ONE HUNDRED FORTY THOUSAND SIX HUNDRED SEVENTY TWO DOLLARS AND FIFTY EIGHT CENTS (\$140,672.58).

TITLE	QUANTITY	RATE	SUBTOTAL
Project Manager	160	105.70	\$ 16,912.00
Project Engineer	160	58.78	\$ 9,404.80
Superintendent	32	78.09	\$ 2,498.88
Project Coordinator	40	41.16	\$ 1,646.40
Senior Engineer	146	160.00	\$ 23,360.00
Engineer	93	140.00	\$ 13,020.00
Designer	147	85.00	\$ 12,495.00
Drafter	40	70.00	\$ 2,800.00
Project Architect	50	125.00	\$ 6,250.00
Project Manager – Architect Firm	26	95.00	\$ 2,470.00
CAD	56	65.00	\$ 3,640.00
Clerical	10	45.00	\$ 450.00
Structural	1	1,500.00	\$ 1,500.00
Civil	1	1,750.00	\$ 1,750.00
Landscape	1	1,500.00	\$ 1,500.00
Not to Exceed OH&P on Architectural & Engineering (up to 10% of Actual Costs Billed)	1	6,923.50	\$ 6,923.50
		TOTAL	\$ 106,620.58

CFD ANALYSIS

TITLE	QUANTITY	RATE	SUBTOTAL
Senior Engineer	27	160.00	\$ 4,320.00
Sub Consultant	1	6,000.00	\$ 6,000.00
OH & P or A/E Services	1	1,032.00	\$ 1,032.00
		TOTAL	\$ 11,352.00

TITLE	ALLOWANCES
Electrical Load Study Allowance	\$ 5,000.00
Data Center Assessment Report Allowance	\$ 5,500.00
Reproductions Allowance	\$ 1,500.00
Courier/Postage Allowance	\$ 200.00

Plan Review Allowance	\$ 3,500.00
Pre-Bid Addtl. A/E Allowances	\$ 3,500.00
Owner Contingency/Misc. Allowances	\$ 3,500.00
TOTAL	\$ 22,700.00

GRAND TOTAL	\$ 140,672.58
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EXHIBIT D

Key Personnel are as follows:

CALIENTE CONSTRUCTION TEAM – GENERAL CONTRACTOR

- Lorraine Bergman – Principal In-Charge
- Kris Geltch – Estimator/Project Manager
- Bryan Grabowy – Project Engineer
- Jeff Vickery - Superintendent

FM GROUP INC – ARCHITECT

- Michael Fries – Principal In-Charge
- Warren Sambach Jr. – Senior Project Architect

LSW ENGINEERS - ENGINEER

- Darrel Miller – Electrical Engineer
- Philip Mouw – Mechanical Engineer

TCLP STRUCTURAL INC. – STRUCTURAL ENGINEER

- Michael Underwood – Structural Engineer

TERRACON – GEOTECHNICAL ENGINEER

- Tim Anderson – Senior Geotechnical & Materials Engineer

LANDCOR CONSULTING – CIVIL ENGINEER

- Wade Cook – Civil Engineer

MCCLOSKEY PELTZ, INC. - LANDSCAPE

- Diane McCloskey – Landscape Architect

EXHIBIT E
SCHEDULE

Task Name	Duration	Start	Finish
- City of Chandler IT Design Build	167 days	Thu 1/26/12	Fri 9/14/12
- Design Phase	167 days	Thu 1/26/12	Fri 9/14/12
Council Meeting & Approval	1 day	Thu 1/26/12	Thu 1/26/12
Notice To Proceed	7 days	Fri 1/27/12	Mon 2/6/12
- Design Development	20 days	Tue 2/7/12	Mon 3/5/12
Site Investigation	2 wks	Tue 2/7/12	Mon 2/20/12
Electrical Load Studies	2 wks	Tue 2/21/12	Mon 3/5/12
- 50% CD's	37 days	Tue 3/6/12	Wed 4/25/12
Evaluate Site Findings	2 wks	Tue 3/6/12	Mon 3/19/12
Team Meeting to Baseline Design	1 day	Tue 3/20/12	Tue 3/20/12
Prepare 50% Design	3 wks	Wed 3/21/12	Tue 4/10/12
PM & IT Review 50% Design	1 wk	Wed 4/11/12	Tue 4/17/12
Prepare Budget for 50% Design	2 wks	Wed 4/11/12	Tue 4/24/12
Team Review Meeting 50% Design/Budget	1 day	Wed 4/25/12	Wed 4/25/12
- 90% CD's	56 days	Thu 4/26/12	Thu 7/12/12
Meet w/ Chandler Building Dept Cursory Review	2 wks	Thu 4/26/12	Wed 5/9/12
Prepare 90% Design	3 wks	Thu 5/10/12	Wed 5/30/12
PM & IT Review 90% Design	1 wk	Thu 5/31/12	Wed 6/6/12
Revise Budget to 90% Design	2 wks	Thu 5/31/12	Wed 6/13/12
Team Review Meeting 90% Design/Budget	1 day	Thu 6/14/12	Thu 6/14/12
"Permitting"	4 wks	Fri 6/15/12	Thu 7/12/12
- 100% CD's	46 days	Fri 7/13/12	Fri 9/14/12
Prepare 100% Design	2 wks	Fri 7/13/12	Thu 7/26/12
PM & IT Review 100% Design	1 wk	Fri 7/27/12	Thu 8/2/12
100% Design Review	1 day	Fri 8/3/12	Fri 8/3/12
"Permitting" and Final Plan Revisions	6 wks	Mon 8/6/12	Fri 9/14/12



General Construction - Construction Management - Design/Build - Facilities Management

October 28, 2011

City of Chandler
Transportation & Development
Construction Management
215 E. Buffalo Street
Chandler, AZ 85225
ATTN: Russ Slotnick

Re: IT Data Center Cooling Renovations & Expansion Project
275 E. Buffalo Street, Chandler, AZ 85225

Mr. Slotnick,

Thank you for the opportunity to submit our Design Phase Service proposal for the IT Data Center Cooling Renovations & Expansion project located at 275 E. Buffalo Street, Chandler, AZ 85225. This proposal is based on the preliminary information received at the team meeting on 6/27/2011 and subsequent documentation provided to us and our final meeting with the City on 8/10/2011. We have also include the additional requests per your directives on 10/26/2011. It is our understanding that there will be one (1) separate contract/PO for the design phase services and one (1) or more for the construction phase services. The following is our scope of services for the design phase service portion only.

CONTRACTOR SCOPE OF WORK:

- 1) **Coordination of Design** - Caliente will coordinate the design phase processes with the architect engineers and City of Chandler staff including all meetings, and other requirements. This will include attendance of all required weekly or bi-weekly meetings along with the architect and engineers. Caliente will provide minutes to document the meetings and distribute to all attendees and other required parties.
- 2) **Design Review** - Participate in the design and provide feedback during meetings and also review of the plans at various key phases. It has been decided that the IT Cooling Renovation and Expansion project will be modeled after the City Hall cooling system. This design concept will be refined and developed into 50% design documents where we will meet again to review the scope. This process will repeat for 90% and final 100% construction documents and include constructability reviews, scope verification and consistency of design with the Architect and Engineers. The City of Chandler is also an integral part in these meetings to make decisions in a timely manner.
- 3) **Budgeting**- Provide preliminary budget estimates based on team input and our comprehensive knowledge of equipment, material and labor costs and productivity combined with historical data from previous similar projects. Involve key subcontractors early to make recommendations, provide options analysis and cost information. The preliminary estimate will serve as the baseline to compare future cost estimates. Complete cost estimates are provided at regular design intervals in a detailed schedule of values and will be the basis of the final construction cost estimate.



- 4) **Scheduling-** Visually organize the project and delineate time frames for design development at various stages of the plans maturity. Outline the major design milestones, including site investigation, completion dates for generations of plan development, building official review for permit, and establishing the construction costs. The schedule will be reviewed and updated as part of the regular planning and coordination meetings with the team and will become the basis for the detailed construction schedule.

ARCHITECT & ENGINEER'S SCOPE OF WORK:

1. Pre-Design

- Site Investigations, Surveys & Design Studies
- Coordination of Design Professionals
- Attend meetings to determine the intent and scope for the project
- Upon request, we will provide an assessment document that will recap our findings from site investigations and will outline the approach to the design. This document would include, but not be limited to things such as: electrical load study findings (if required), HVAC approach and/or any other mechanical findings, electrical information and other design related findings.

2. Schematic Design

- Adapt design concept to develop plans/spec's into 50% and 90% CD's
- Preliminary floor plans
- Preliminary Mechanical, Plumbing and Electrical designs. It is our understanding that the electrical service is sufficient to handle the expansion and mechanical work and no major overhaul is anticipated. We will confirm this via load studies and any major electrical modifications required as a result of said load studies will be brought to the owner's attention as an additional service
- Preliminary outline specifications
- Preliminary Landscape plan (if required)
- Attend weekly or bi-weekly meetings with the City and identified stakeholders during this phase
- Meet with planning dept. to review progress design before it is complete to determine if any design changes are required to meet City requirements prior to finalizing the design.

3. Construction Documents (100%)

- Attend final 90% design review meeting and incorporate final changes
- Prepare final architectural and engineering drawings, and specifications as required for permits and construction
- Attend up to two (2) meetings with the City Management/Council etc.
- Submit final CD package to Caliente for final cost estimating and City of Chandler for final review and approval
- Address questions from Caliente and bidding subcontractors during the bidding process and issue Addenda as required





General Construction - Construction Management - Design/Build - Facilities Management

Total Design phase services, preconstruction activities and CFD Analysis add alternate summary:

DESIGN & PRECONSTRUCTION PHASE COST SUMMARY

Task	QTY	Rate	Total
Contractor Costs (Total Not to Exceed)	1	\$ 53,162.08	\$ 53,162.08
Engineering Costs (Total Not to Exceed)	1	\$ 51,675.00	\$ 51,675.00
Architectural Costs (Total Not to Exceed)	1	\$ 17,560.00	\$ 17,560.00
Not to Exceed OH&P on A/E Services (10% of Actual Costs Billed)	1	\$ 6,923.50	\$ 6,923.50
		Design Phase Cost	\$ 129,320.58
Lump Sum Add for CFD Analysis (see alternate)	1	\$ 11,352.00	\$ 11,352.00
		Total Design Phase Cost with CFD Analysis	\$ 140,672.58

Design Phase Services includes attendance at weekly meetings, as requested by the City of Chandler. Coordinating the design team, taking and distributing minutes to attendees and other required parties. It is estimated that weekly meetings could result in a combined net hourly commitment of ten to twelve man-hours per meeting up to sixteen weeks. Coordinating site conditions, site walks, design documents and other associated work is also included in this scope. We have allocated time to attend the requested number of meetings, however; if the number of meetings is reduced or combined into longer less frequent meetings, we would anticipate a cost saving and propose to only bill for actual time incurred and credit back the unused funding set aside for these tasks. The architectural and engineering fee's will also follow suit and will only bill for time/costs incurred for meetings. Please refer to the Architectural and Engineering cost estimate charts for their respective time allotted for meetings. The following chart identifies the estimated cost for the contractors design phase services.

CONTRACTOR DESIGN PHASE SERVICES ESTIMATE

Title	QTY	Rate	Subtotal
Project Manager	80	\$ 105.70	\$ 8,456.00
Project Engineer	80	\$ 58.78	\$ 4,702.40
Superintendent	8	\$ 78.09	\$ 624.72
Project Coordinator	8	\$ 41.16	\$ 329.28
		Total	\$ 14,112.40



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Preconstruction services includes cost estimating with each phase of design to ensure that the project remains within budget. We will also involve key subcontractors and suppliers to assist in budgeting and to confirm pricing accuracy (no additional cost). A detailed construction schedule will be prepared to match the construction activities programmed in the construction drawings as the documents are sufficiently completed. Additionally, we will assemble a subcontractors list for whom we propose to invite to bid on the project and will add/remove subcontractors based on City feedback and review. We have also included time to meet with the planning department and review the plans with them and incorporate any requested changes to the drawings prior to submitting for permit. When the construction documents are ready for permit, and after initial City (planning dept.) review, it is generally requested by the building/planning department that minor changes be made to the documents and then be resubmitted. At the time of resubmittal, we will prepare a bid package, solicit subcontractor interest, bid the plans and specifications and prepare a detailed construction phase proposal with final construction costs. We propose to bill for actual time/costs incurred and return any unused funds upon completion.

CONTRACTOR PRECONSTRUCTION SERVICES ESTIMATE

Title	QTY	Rate	Subtotal
Project Manager	80	\$ 105.70	\$ 8,456.00
Project Engineer	80	\$ 58.78	\$ 4,702.40
Superintendent	24	\$ 78.09	\$ 1,874.16
Project Coordinator	32	\$ 41.16	\$ 1,317.12
		Total	\$ 16,349.68

Contractor allowances include funds for an electrical load study which may or may not be required and will be determined when sufficient data is collected regarding the existing site conditions. Reproductions will be reimbursed as well as costs associated with courier and postage costs. We have also included a plan review allowance which is to cover costs associated with building department review of plans for permitting. In addition, we have included an allowance for the Architect and Engineer’s participation in the pre-bid/bid of the construction documents to facilitate questions & answers, site walks and other functions to ensure subcontractor understanding of bid requirements and other items associated with bid and award and other miscellaneous additional scope items. Last, we have included an allowance for contractors’ contingency which is to cover any additional services, overages or other unforeseen conditions. All allowances will be billed for costs incurred and unused funds will be returned upon completion.

CONTRACTOR ALLOWANCES

Electrical Load Study Allowance	\$ 5,000.00
Data Center Assessment Report Allowance	\$ 5,500.00
Reproductions Allowance	\$ 1,500.00
Courier/Postage Allowance	\$ 200.00
Plan Review Allowance	\$ 3,500.00
Pre-Bid & Addtl. A/E Allowance	\$ 3,500.00
Contractor Contingency/Misc. Allowances	\$ 3,500.00
Total Contractor Allowances	\$ 22,700.00
Contractor Total	\$ 53,162.08



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Computational Fluid Dynamics (CFD) Analysis has been included as a design alternate, although given the decision to model this space after the new City Hall Data Center, which is a common and effective solution, a CFD Analysis on this project, in our opinion, is not an effective added value option. This will remain in the scope and will include CRAC unit failure modeling as per our team meeting on 8/10/2011. The scope of services for the CFD Analysis includes preparation of CAD drawings of the room including sections showing heights of floor, racks, ceiling, etc. The floor plan will show the proposed mechanical and IT equipment along with proposed electrical loads in the racks. The 3rd party vendor will model the room using CoolSim software. LSW Engineers will review the model and with the vendor's staff to confirm that everything is correct and then the CFD analysis will be performed on the computer system and software. LSW will meet with the vendor to review and confirm the findings. The deliverables are multiple reports and graphics showing the predicted rack and room temperatures as well as the airflow patterns through the room. The reports provide the entering and leaving air temperatures for each rack and the graphics include the supply airflow under the floor, in the room, and the return airflow in the room. Using the graphics, recirculation patterns can be seen and hotspots identified. The graphics can be rotated, enlarged, and flipped to allow an analysis at each rack if desired. After the analysis is complete and reports are generated the findings will be presented to the City for review and Q&A.

Add Alternate - CFD Analysis

Title	QTY	Rate	Subtotal
Senior Engineer	27	\$ 160.00	\$ 4,320.00
Sub-Consultant	1	\$ 6,000.00	\$ 6,000.00
OH&P on A/E Services (10% fee)	1	\$ 1,032.00	\$ 1,032.00
		Total	\$ 11,352.00

Engineering Design cost summary includes up to sixteen weekly meetings as requested by the City. The following chart breaks down the engineering estimate and the cost for meetings is a not to exceed number and will be billed only for costs incurred. Actual costs may vary depending on which team member attends each meeting. Design Costs are lump sum based on design criteria.

ENGINEERING DESIGN SERVICES COST

Field Work

Title	QTY	Rate	Subtotal
Senior Engineer	6	\$ 160.00	\$ 960.00
Engineer	6	\$ 140.00	\$ 840.00
Designer	6	\$ 85.00	\$ 510.00
		Total	\$ 2,310.00

CD's 50%, 90% & 100%

Title	QTY	Rate	Subtotal
Senior Engineer	80	\$ 160.00	\$ 12,800.00
Engineer	57	\$ 140.00	\$ 7,980.00
Designer	100	\$ 85.00	\$ 8,500.00
Drafter	40	\$ 70.00	\$ 2,800.00
		Total	\$ 32,080.00



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ENGINEERING DESIGN SERVICES COST (CONTINUED)

Meetings				
Title	QTY	Rate	Subtotal	
Senior Engineer	60	\$ 160.00	\$	9,600.00
Engineer	30	\$ 140.00	\$	4,200.00
Designer	41	\$ 85.00	\$	3,485.00
			Total	\$ 17,285.00
			Total Engineering	\$ 51,675.00

Architectural Design includes up to eight meetings and meetings will be billed only for costs/time incurred. Design Costs are lump sum based on design criteria.

**ARCHITECT DESIGN SERVICES COST
Field SURVEY'S, BACKGROUND DEVELOPMENT ETC.**

Title	QTY	Rate	Subtotal	
Project Architect	8	\$ 125.00	\$	1,000.00
Project Manager	6	\$ 95.00	\$	570.00
CAD	22	\$ 65.00	\$	1,430.00
Clerical	4	\$ 45.00	\$	180.00
			Total	\$ 3,180.00

50% - 90% Design

Title	QTY	Rate	Subtotal	
Project Architect	0	\$ 125.00	\$	-
Project Manager	10	\$ 95.00	\$	950.00
CAD	22	\$ 65.00	\$	1,430.00
Clerical	2	\$ 45.00	\$	90.00
Structural	1	\$ 1,500.00	\$	1,500.00
Civil	1	\$ 1,750.00	\$	1,750.00
Landscape	1	\$ 1,500.00	\$	1,500.00
			Total	\$ 7,220.00

100% Design

Title	QTY	Rate	Subtotal	
Project Architect	2	\$ 125.00	\$	250.00
Project Manager	10	\$ 95.00	\$	950.00
CAD	12	\$ 65.00	\$	780.00
Clerical	4	\$ 45.00	\$	180.00
			Total	\$ 2,160.00

MEETINGS

Title	QTY	Rate	Subtotal	
Project Architect	40	\$ 125.00	\$	5,000.00
Project Manager		\$ 95.00	\$	-
			Total	\$ 5,000.00
			Total Architectural	\$ 17,560.00



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CLARIFICATIONS

- 1) Prices include up to Sixteen (16) meetings between the City of Chandler, Caliente and the Engineers and eight (8) meetings with the Architect, based on the proposed attached schedule.
- 2) Pricing is based on completion of services in a four to five month design phase (from NTP) and the provided schedule. Extended timeframe beyond this shall be subject to additional compensation if delays are the fault of the City, if delays are the fault of the design build team additional compensation is not entitled.
- 3) Pricing and schedule are based on City of Chandler review time of one (1) week followed by a single day team meeting where direction, changes and steadfast decisions will be made enabling us to move to the next step, as outlined in the schedule.
- 4) This price does not include construction phase scope or activities and is based on the milestones outlined in the provided schedule and do not include construction administration. Design and preconstruction services are included as defined herein.
- 5) Professional services and reimbursable expenses will be billed on a monthly basis, submitted on a Caliente Construction, Inc. pay application to the City of Chandler and invoicing will lump sum. Invoices will be submitted in a schedule of values format which will be agreed upon prior to first draw.
- 6) Design and preconstruction tables above are estimated and actual costs will be billed against the overall PO NTE amount albeit it is possible that actual costs may be more in one category or another and may exceed original estimates for a given task, but not PO amount. Contingency use will be authorized by the City prior to use and a Contingency Use Authorization log will be maintained by Caliente and submitted with each payment application.
- 7) The following services are not included under our Design Phase Service, and would be an additional fee.
 - a. City initiated increase or change in project scope, or making changes to the design or documents that are inconsistent with previously furnished information or approvals
 - b. Preparation of scale models
 - c. Additional meetings, workshops, or site visits beyond those specified in the scope of work listed above and the number of hour allotted
 - d. Preparing construction documents using BIM modeling
 - e. Design for LEED certification

We are very excited to have this opportunity to work with the City of Chandler on this project. If you have any specific questions regarding this proposal please contact me directly at our office.

Sincerely,

Kris Geltch
Project Manager



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