| Chandler · Arizona Where Values Make The Difference | PURCHASING ITEM FOR COUNCIL AGENDA Memo No. CA09-118 | 1. Agenda Item Number: 27 |
|---|---|---|
| | | 2. Council Meeting Date: November 20, 2008 |

| | |
|---|---|
| TO: MAYOR & COUNCIL | 3. Date Prepared: November 3, 2008 |
| THROUGH: CITY MANAGER | 4. Requesting Department: Public Works |

**5. SUBJECT:** Award a pre-construction services Construction Manager at Risk contract to Achen-Gardner Engineering, LLC for roadway improvements on Gilbert Road (Queen Creek to Hunt Highway), Project No. ST0809-251, in an amount not to exceed $307,230.

**6. RECOMMENDATION:** Staff recommends that Council award a pre-construction services Construction Manager at Risk contract to Achen-Gardner Engineering, LLC for roadway improvements on Gilbert Road (Queen Creek to Hunt Highway), Project No. ST0809-251, in an amount not to exceed $307,230.

**7. BACKGROUND/DISCUSSION:** The pre-construction services Construction Manager at Risk contract award is the first step in the Construction Manager at Risk process for construction. During the pre-construction services phase, the contractor will develop and manage the design schedule, provide value engineering, perform utility investigations, and prepare the guaranteed maximum price.

Gilbert Road from Queen Creek Road to Hunt Highway is a major arterial corridor that carries high volumes of traffic between the Santan Freeway and southeast Chandler. The current roadway section varies, consisting of both unimproved two lane segments as well as fully improved six lane sections adjacent to commercial and residential development. This project will improve the corridor to a full six lane arterial section (four lanes south of Chandler Heights), with a landscaped median, bike lanes, curb, gutter, and sidewalk, right and left turn lanes, bus pullouts, and extensive water, reclaimed water, and sewer infill work. The project is slated to start construction in Summer 2010, with a phased construction sequence to accommodate the real estate acquisition and utility relocation schedule. Duration is expected to be about three years.

**8. EVALUATION:** The City's selection process was developed in accordance with state law for Construction Manager at Risk services. Staff solicited and received statements of qualifications from nine (9) interested contractors on July 3, 2008. The selection committee consisted of:

Tim Krawczyk, Project Manager
Bill Fay, Public Works Engineer
Paul Young, Senior Engineer
Bob Carter, Registered Contractor
Gene Larson, Resident
Denis Howe, Observer

The three contractors short-listed were Pulice Construction, Inc., Achen-Gardner Engineering, LLC and Hunter Construction. Achen-Gardner Engineering, LLC was determined the best firm based on their qualifications, current and projected workload, and experience. The costs proposed for this project were comparable to staff estimates and historical pre-construction services prices.

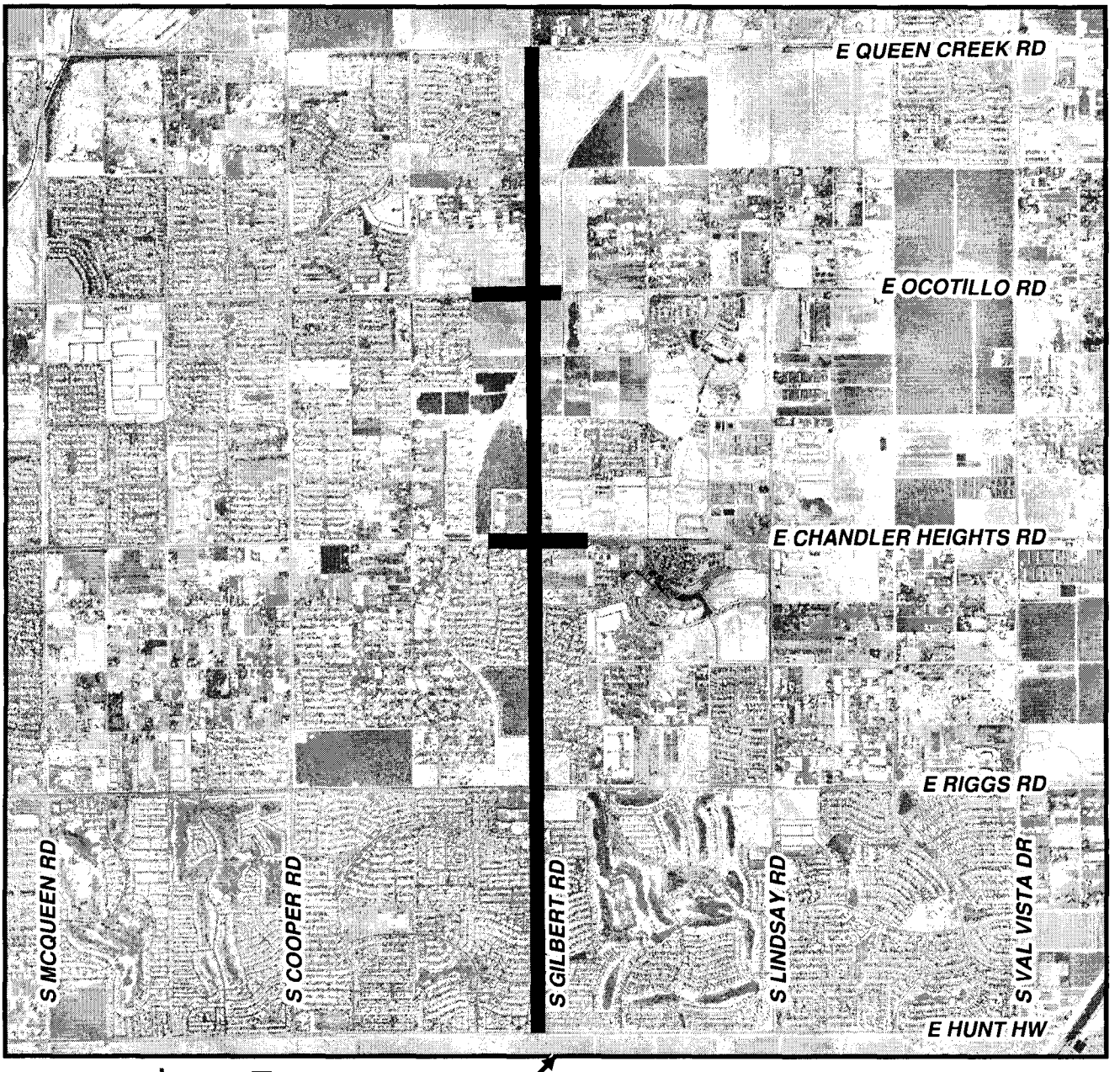
**9. FINANCIAL IMPLICATIONS:**

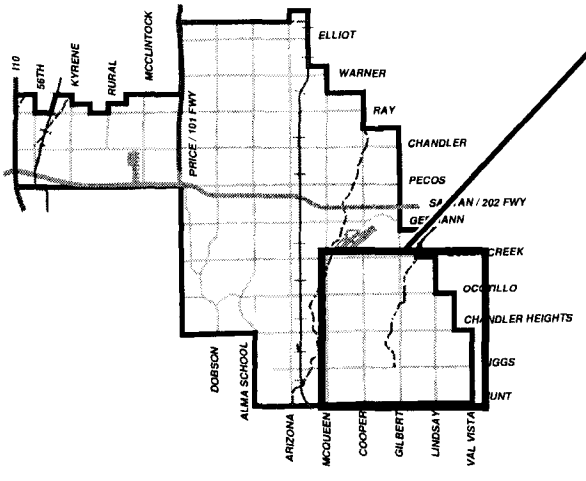
| | |
|---|---|
| Cost: | $307,230 |
| Savings: | N/A |
| Long Term Costs: | N/A |
| Fund Source: | |

| Acct. No.: | Fund Name: | Program Name: | CIP Funded: | Amount: |
|---|---|---|---|---|
| 415.3310.0000.6517.8ST596 | Arterial Street Impact Fees | Gilbert Road (Queen Creek to Hunt Highway) | FY07/08 | $307,230 |

| | |
|---|---|
| **10. PROPOSED MOTION:** Move that Council award a pre-construction services Construction Manager at Risk contract to Achen-Gardner Engineering, LLC for roadway improvements on Gilbert Road (Queen Creek to Hunt Highway), Project No. ST0809-251, in an amount not to exceed $307,230, and authorize the Mayor to sign the contract documents. | |
| **ATTACHMENTS:** Location Map, Contract | |
| **APPROVALS** | |
| **11. Requesting Department**<br>Daniel W. Cook, Deputy Public Works Director | **13. Department Head**<br>R.J. Zeder, Public Works Director |
| **12. City Engineer**<br>Sheina Hughes, Assistant Public Works Director/City Engineer | **14. City Manager**<br>W. Mark Pentz |

# GILBERT ROAD IMPROVEMENTS
# PROJECT NO. ST0809-251




## MEMO NO. CA09-118

DESIGN LIMITS

NTS

ChamGIS

KN (W:\ENGINEER\GENSERV_ArcMap_Shared\Map Requests\Contract Admin\CA09-118 GILBERT RD IMPROVEMENTS\CA09-118.mxd) 11/03/2008

**CONSTRUCTION MANAGER AT RISK**
**Pre-Construction Services**

PROJECT TITLE. **Gilbert Road Improvements (Queen Creek Road to Hunt Highway)**
PROJECT NO. **ST0809-251**

**THIS AGREEMENT**, made and entered by and between CITY of Chandler, a municipal corporation, hereinafter designated "CITY" and **Achen-Gardner Engineering, LLC, a limited liability company licensed to do business in the State of Arizona,** , hereinafter designated the "Construction Manager At Risk" or "CM@Risk."

**RECITALS**

WHEREAS, CITY intends to design and build structures and facilities to be known as the **Gilbert Road Improvements (Queen Creek Road to Hunt Highway;** and

WHEREAS, the Project will be performed in two phases. Phase I will include the pre-construction phase services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the construction of the **Gilbert Road Improvements (Queen Creek Road to Hunt Highway)**; and

WHEREAS, this is a CM@Risk contract for Phase I of the Project which required that the CM@Risk be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CM@Risk has represented to the CITY that CM@Risk has expertise and ability and is qualified to provide these pre-construction services and Construction Management Services and also to construct the Project and based on this representation the CITY engages CM@Risk to provide the services described herein; and

WHEREAS, the Mayor and CITY Council of the CITY of Chandler are authorized and empowered by the provisions of the CITY Charter to execute Agreements for Professional Services; and

WHEREAS, to undertake the design of said Project the CITY has entered into a contract with **Entellus, Inc.,** hereinafter referred to as the "Project Designer."

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

**ARTICLE 1- DEFINITIONS**

"CM@Risk's Representative" means the person designated as such in this Contract.

"Data Sheet" means the sheet listing Project information contained in the RFP.
"Guaranteed Maximum Price" or "GMP" means the sum of the maximum Cost for the construction of this Project, including but not limited to, the CM@Risk's construction fee; general conditions fee; taxes, bonds, insurance costs; and any contingency as proposed and approved pursuant to Subsection 3.2.8.

"Product Data" means illustrations, schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the work.

"Project" means all of the work and services to be performed pursuant to this contract and the construction of the **Gilbert Road Improvements (Queen Creek Road to Hunt Highway)** all as more particularly described herein or in Exhibit A attached hereto and incorporated herein by reference.

**ARTICLE 2 - PROJECT TEAM - CM@RISK KEY PERSONNEL**

The CM@Risk will be an integral member of the Project Team, consisting of CM@Risk, representatives from the CITY, the Project Designer, and other consultants, as required.

**2.1 Key Personnel.**
Prior to the start of these Contract Services, the CM@Risk shall submit to the CITY for approval detailed résumés of key personnel, including any Sub consultants, that will be involved in performing services to be provided by CM@Risk.

**2.2 Prior Approval for Change.**
At any time hereafter that the CM@Risk desires to change key personnel while performing under this Contract, the CM@Risk shall submit the qualifications of the new personnel to the CITY for prior approval.

**2.3 Key personnel Listed.**
Key personnel shall include, but are not limited to, principal-in-charge, pre-construction manager, project manager (CM@Risk's Representative), superintendent and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, procurement planning and administration of the Work.

**2.4 CM@Risk's Representative.**
CM@Risk's Representative/project manager shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the contract services. CM@Risk's Representative shall communicate regularly with CITY and shall be vested with the authority to act on behalf of CM@Risk.

**ARTICLE 3 – SCOPE OF WORK CM@RISK'S SERVICES AND RESPONSIBILITIES**

Generally, it will be the responsibility of the CM@Risk to integrate the design and construction phases, utilizing its skills and knowledge of general contracting, to develop schedules; prepare detailed project construction estimates; study labor conditions; and, in any other way deemed necessary, to contribute to the development of the project during the pre-construction/design phase.

**3.1 Relationship Of City And CM@Risk**

A. For the fee set forth in Article 6, the CM@Risk undertakes to act as the CITY'S fiduciary and to furnish professional pre-construction and construction management services during the design of the Project.

B. The CM@Risk accepts a relationship of trust and confidence between itself and the CITY and undertakes to act as the CITY's fiduciary in all matters related to the Project. The CM@Risk agrees to furnish its best skills and best judgment to cooperate with the CITY and Project Designer during the design of the Project, and in all ways to further the interests of the CITY and the Project. The CM@Risk shall furnish value engineering, constructability. reviews and comments, estimates, and supporting comment to the Project Designer and CITY to provide a quality and complete project, consistent with the available budget, all as more particularly described herein.

C. Because of the CM@Risk's fiduciary duties to the CITY, the Project will be an "open book" job whereby the CITY may attend any and all meetings of the CM@Risk firm relating to the Project, and the CITY or its designated auditors or accountants shall have access to any and all records of the CM@Risk or maintained by the CM@Risk relating to the Project. Open book shall include the unit cost of labor and material provided by subcontractors and shall be provided to the CITY.

**3.2 PRE-CONSTRUCTION SERVICES**

The CM@Risk shall provide the following pre-construction services:

**3.2.1 Project Review**

A. CM@Risk shall meet with the CITY REPRESENTATIVE and other CITY team members, the Project Designer and other design team members to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project.

B. The CM@Risk shall become an integral part of the Project Team that will coordinate the development and progress of the design and construction processes.

C. CM@Risk shall visit the Site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Contract Documents.

D. The CM@Risk shall develop written project procedures, in cooperation with the CITY REP that will be used as a guide for the management and coordination of this Project through the life of the Project.

### 3.2.2 Consultation During Project Development

The CM@Risk shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phases established by the contract between the CITY and the Project Designer, to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM@Risk shall provide written recommendations on construction feasibility.

### 3.2.3 Value Analysis

A. The CM@Risk shall, after a complete review of the Project Program, evaluate the designs available at the time of the CM@Risk's commencement of Pre-Construction services, and obtain an understanding of the intent of the CITY and the Project Designer, provide value analysis services and offer cost savings suggestions and best value recommendations to the CITY. All recommendations must be fully reviewed with the Project Designer and CITY, and approved by the CITY prior to implementation.

B. Value analysis efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function.

C. Value analysis efforts shall also take into consideration applicable constructability issues.

D. The CM@Risk shall promptly notify the CITY and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

E. All value analysis studies must be provided on a timely basis within the design schedule.

F. Value analysis studies shall be continuous as the design is being developed.

G. The CM@Risk shall conduct value analysis throughout the project and provide the CITY estimates as appropriate and shall conduct major value analysis at completion of the schematic design phase and at the design development phase (utilizing the Design Development documents), which analysis shall include, but not be limited to, the items noted below:

1. Develop value analysis concepts for consideration at the session noted in #2 below (it is anticipated that the Project Designer will be concurrently conducting a similar activity).

2. Brainstorming session(s) with design team.

3. Written cost studies shall be produced and submitted to the CITY within two (2) weeks of the brainstorming session.

4. Written pro/con evaluation of the cost studies shall be provided with the cost studies.

5. Formal presentation of the written study to the Design Team shall be conducted by the CM@Risk firm.

6. A final written value analysis study document including a summary of value analysis items, applicable cost adjustments, selected items and their corresponding cost adjustments shall be presented to the Design Team.

H. In between the milestones for major value analysis studies, the CM@Risk shall periodically provide a tracking report which identifies the increases or decreases in costs due to value engineering or scope changes. It shall be the responsibility of the CM@R to keep the CITY and Project Designer informed as to the major trend changes in costs relative to the CITY's budget.

### 3.2.4 Schedule

A. Within ten (10) days from the Notice to Proceed on this contract, the CM@Risk shall establish a detailed CPM (Critical Path Method) schedule of the pre-construction/design phase of the Project. Within thirty (30) days from the Notice to Proceed on this contract, the CM@Risk shall establish a detailed CPM schedule of the construction phase of the Project. Both schedules shall be established with concurrence of the CITY and the Project Designer. The CM@Risk shall monitor this schedule during the pre-construction/design phase, insure that this schedule is updated, and advise the CITY of any deficiencies in adhering to this schedule by any party.

B. The CM@Risk shall utilize standard software to prepare, provide, and maintain appropriately detailed design phase CPM schedules.

C. Scheduling software shall allow for integration of all aspects of the design processes and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, and tabular reports.

D. The Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. Updated schedules will be required at the end of each Design phase established by the contract between the CITY and the Designer, and after major value engineering decisions.

### 3.2.5 Constructability Review

CM@Risk shall review the design throughout the pre-construction phase as to constructability, including without limitation, all issues identified in the CM@Risk's proposal. With respect to each such issue, the CM@Risk shall submit a written report to both the CITY and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the CM@Risk's in-depth study/research; and (3) written recommendations for addressing the issue.

### 3.2.6 Construction Cost Model/Estimates

A. The CM@Risk shall develop a project budget/cost model (independent from any similar cost estimate required of the Project Designer such as the Statement of Probable Construction Costs) which shall be updated as needed but at a minimum at the end of each design phase (concepts, schematic, design development, and final construction documents) during which the CM@Risk is performing Pre-Construction Services. (Hereinafter: CM@Risk Cost Model Update). Due to variability in economic conditions, all cost models are to be construction based not data based; that is, the CM@Risk is to obtain pricing of trade work directly from the market place.

B. Each CM@Risk Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the facility (including alternates, CM@Risk General Conditions, CM@Risk fees, and CM@Risk contingency) in accordance with the Project Designer's Program.

C. The Amount Available for Construction is the sum set out on the Data Sheet and excludes designer fees and other reserves retained by the CITY.

D. In the event that the CM@Risk's Statement of Probable Construction Costs exceed the Amount Available for Construction, the CITY may direct the CM@Risk to (and the CM@Risk shall without additional compensation to the CM@Risk) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the Project Program within the Amount Available for Construction.

E. Each CM@Risk Cost Model Update and the Designer's Probable Construction Costs will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Amount Available for Construction. Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM@Risk Cost Model Update. The CM@Risk shall work with the CITY and the Project Designer to reach a mutually acceptable joint Probable Construction Cost.

F. If requested by the CITY, the CM@R shall prepare a preliminary "cash flow" projection based upon

historical records of similar type projects to assist the CITY in the financing process.

**3.2.7 Coordination of Contract Documents**

A. The CM@Risk shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The CM@Risk shall notify the Project Designer and the CITY in writing, as appropriate, upon observing any features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous.

B. The CM@Risk shall review the final documents to see that all comments have been incorporated.

C. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM@Risk during the review process shall be deemed to be corrected, and any associated costs shall be included in the CM@Risk's Guaranteed Maximum Price (GMP).

**3.2.8 Construction Guaranteed Maximum Price (GMP)**

A. Within 10 days after final review submission of the construction documents to CITY or at any sooner time requested by the CITY, the CM@Risk shall develop and provide to CITY a GMP proposal based on the design documents as completed at that time. Such GMP proposal will include all construction costs, and all other projected costs, including, without limitation, any CM@Risk contingency and General Conditions allowance but not including any CITY Construction Contingency. The GMP proposal shall include a schedule of values which shall specify all of the following: (a) unit or lump sum prices for work to be performed by CM@Risk (may be by CSI code, total costs, and cost per square feet of building); (b) each anticipated subcontract amount; (c) a separately identified CM@Risk's fixed fee as a fixed percentage of the GMP including home office overhead and profit; (d) General Conditions, and (e) all project related costs, i.e., taxes, bonds, personnel payroll benefits, etc. The final GMP shall state all qualifications and assumptions used to prepare the final GMP.

B. The GMP must not exceed the Amount Available for Construction as set forth on the Data Sheet.

C. In the event that the GMP exceeds the Project Construction Budget, the CITY reserves the right to direct the CM@Risk to (and the CM@Risk shall) work in conjunction with the Project Designer to redesign the Facility as necessary to maintain the Project Program and meet the Project Construction Budget as follows:

1. After consultation with the CITY, the CM@Risk shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost.

2. The CM@Risk shall develop and provide to CITY a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.

3. The CM@Risk shall analyze the Project Designer's originally submitted and as altered and redrafted Construction Documents, and make recommendations to the CITY as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Project Construction Budget.

D. Notwithstanding anything in the RFQ to the contrary, the CM@Risk shall perform the work set forth in this Sub Section 3.2.8 without additional compensation.

E. CITY has the right to reject any GMP as originally submitted, or as adjusted. In that event, this Contract will terminate according to its terms.

F. The CM@Risk's detailed construction cost estimates and GMP will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Project Construction Budget. Meetings and negotiations between CITY, Project Designer and the CM@Risk will be held to resolve questions and differences that may occur between the Project Construction Budget and the CM@Risk's construction cost estimate and corresponding GMP. If indicated by the Project Construction budget limitations or other circumstances, the CM@Risk shall work with the CITY and Project Designer to reach

a mutually acceptable GMP.

G. Upon acceptance by the CITY of a GMP, the CITY shall prepare and the CM@Risk shall execute a Construction Contract reflecting the GMP and requiring CM@Risk to perform construction in accordance with the approved plans and specifications for that price. Within 10 days after the execution of the Construction Contract as provided herein, CM@Risk shall provide the CITY with a Performance Bond and a Labor and Material Payment Bond each for 100% of the GMP in conformity with state law.

**3.2.9 Phased GMPs.**

The CM@Risk may be requested to provide individual GMP proposals for specific construction phases of the Project. These individual phase GMP proposals shall be based on the specific phase construction documents, and will be prepared in accordance with the procedures identified in this Section.

**3.2.10 Non-Acceptance of the GMP and Termination of CITY-CM@Risk Contract**

The CITY, at its sole discretion, may decline to accept the CM@Risk's GMP for the construction or for any Construction Phase and thereupon without penalty, this Contract shall terminate according to its terms at the end of the Pre-Construction Phase of the Project.

**ARTICLE 4-- PHASED CONSTRUCTION**

**LONG LEAD TIME PROCUREMENT**

**4.1 Recommendations for Phasing**
If phased construction is appropriate and the CITY and Project Designer approve, the CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work. The CM@Risk shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, and any other factors pertinent to saving time and cost.

**4.2 Recommendation for long-lead time items.**
The CM@Risk shall recommend to the CITY and the Project Designer a list and a schedule for the procurement by the CITY of long-lead time items which will be required to meet the Project Schedule.

**4.3 Bid for Procurement**
If the CITY determines that it is in its own best interest to have the CM@Risk procure such long-lead time items, the CITY may, at its sole discretion, direct the CM@Risk to solicit bids.

**4.4 Purchase by CM@Risk**
Upon approval by the CITY of the funding and of the terms and conditions of the purchase of said long-lead material, the CITY will authorize the CM@Risk to issue purchase orders for the material. If necessary the Contract Price will be adjusted.

**4.5 City Procurement**
If the CITY determines that it is in its own best interest to procure such long-lead time items, items may be procured by the CITY on terms and conditions acceptable to the CM@Risk. Upon the CITY's acceptance of the CM@Risk's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the CITY to the CM@Risk, who shall accept responsibility for such items as if procured by the CM@Risk.

**4.6 Option not to Procure**
If the CITY chooses not to procure long lead-time items prior to acceptance of a GMP, the Design Professional shall list the items and a delivery schedule in the Construction Documents and such required delivery schedules shall be taken into consideration in determining the Contract Time for the Construction Contract.

**ARTICLE 5 – STANDARD OF CARE AND CORRECTIONS**

**5.1 CM@Risk Responsibility**
The CM@Risk shall be responsible for the completeness and accuracy of reviews, reports, supporting data, and

other pre-construction work prepared or compiled by CM@Risk pursuant to this Contract and shall correct such work, at the sole expense of CM@Risk. The fact that the CITY has accepted or approved the CM@Risk's work shall in no way relieve the CM@Risk of any such responsibilities. The CM@ Risk is not assuming any obligation to perform design or responsibility for any design or performing any peer review of any Architect or other Designer's work.

**5.2 Competent Staff**
The CM@Risk will maintain an adequate and competent staff of qualified persons, as may be determined by the CITY, throughout the performance of this Contract to ensure acceptable and timely completion of the scope of services. If the CITY objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk shall take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace with new personnel agreed to by the CITY.

**ARTICLE 6-- CONTRACT PRICE**

**6.1 Fees**
For services rendered by CM@Risk as described herein CITY shall pay CM@Risk a fee not to exceed the sum of **Three Hundred Seven Thousand Two Hundred Thirty** dollars **($307,230)** at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit B and made a part hereof by reference. Payment will be made monthly on the basis of progress reports. An Application and Certification for Payment Sheet must be submitted to CITY which shall be accompanied by a progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any deliverables submitted, and as to any sub-consultants, their actual requests for payment plus similar narrative and listings of their work.

**6.2 Taxes**
The Contract Price is deemed to include all transaction privilege, sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**ARTICLE 7—CONTRACT TIME**

**7.1 Contract Time.**
Following receipt of a "Notice to Proceed" with the Pre-construction Services, CM@Risk shall complete all Pre-construction Services and submit the final GMP to CITY within a maximum of **Seven Hundred Thirty (730)** calendar days of the date indicated on the Notice to Proceed.

**7.2 Production Schedule.**
CM@Risk shall complete all services specified herein in accordance with the CPM Progress Schedule and progress milestones included in such CPM Schedule. In the event delays are experienced beyond the control of CM@Risk, the completion date may be extended as mutually agreed upon by CITY and CM@Risk.

**ARTICLE 8 -- CLAIMS AND DISPUTES**

**8.1 Dispute Avoidance and Resolution**

A. 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 CITY 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.

B. CM@Risk and CITY shall will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and CITY's Representative.

C. If a dispute or disagreement cannot be resolved through CM@Risk's Representative, and City's Representative, CM@Risk's Principal-in-charge and the City Engineer, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than five (5) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Principal-in Charge and the City Engineer, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**8.2 Duty to Continue Performance**
CM@Risk shall continue to perform the work and CITY shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and CITY.

**8.3 Disputed Invoices.**

**8.3.1 Disputed Items**
CITY may temporarily delete any disputed items contained in CM@Risk's invoice, including items disputed due to lack of supporting documentation, and pay the remaining amount of the invoice. CITY shall promptly notify CM@Risk of the dispute and request clarification and/or remedial action. CITY may withhold payment on all disputed items until the issues are resolved. After any dispute has been settled, CM@Risk shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**8.3.2 Disputed Invoices**
In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

**8.4 Alternate Dispute Resolution:**
All claims, disputes and other matters in question between CITY and CM@Risk arising out of, or relating to this Contract, or the breach thereof (except for claims which have been resolved pursuant to subsection 8.3 herein above shall be decided by binding, unappealable special arbitration, as described below, if the claim for compensation, costs or expenses, damages or reimbursement is equal to or less than $50,000. Claims in excess of over $50,000 shall have non-binding mediation as the first step to settling the dispute or claim.

**8.4.1 Binding Special Arbitration.**
All arbitration of claims shall be conducted in Chandler, Arizona, in accordance with the following rules:

A. Any time after the parties have attempted in good faith but without success to resolve one or more disputes, a party may notify the other in writing that they are at impasse (Notice of Impasse) and request immediate arbitration in accordance with the terms herein.

B. Within three days after the date of such Notice of Impasse, each party shall select an impartial intermediary, who shall within 10 days, together, agree upon a third impartial person who will be the arbitrator. To be considered impartial an intermediary or arbitrator shall not have any previous or current relationship which would be considered a conflict of interest with either party, including, but not limited to, current or previous employment or contractual relationship, indebtedness or ownership interest.

C. The parties shall immediately cooperate with each other to draft together a short summary of the facts and a list of questions or issues to be resolved by the arbitrator. If the facts are in dispute, such disputed facts shall be listed as contentions by the party asserting them. In the event the parties are unable to agree upon a summary of the facts or a list of questions or issues, each party shall instead include a statement of facts and list of issues in that party's Position Paper submitted to the arbitrator. Such summary of facts and list of questions or issues shall be completed by the parties and submitted to the arbitrator within twenty (20) days of the date of the Notice of Impasse.

D. The parties shall cooperate to gather any documents and exhibits necessary to resolve the issues and provide them jointly to the arbitrator. In the event of a dispute between the parties regarding whether a document should be provided, the disputed document shall be submitted to the impartial intermediaries who will determine its appropriateness for submittal. Correspondence between the parties which discusses settlement or resolution of the issues shall be submitted. All such evidence shall be submitted to the arbitrator within twenty (20) days of the date of the Notice of Impasse.

E. Each party may submit a written Position Paper of no more than ten (10) pages, supporting or explaining that party's position and providing citations to relevant law. Any such Position Paper shall be submitted to the arbitrator within thirty (30) days of the date of the Notice of Impasse.

F. There shall be no hearing, no witnesses, no argument nor contact by the parties or their representatives with the arbitrator except for the submission of the joint submittals and each party's Position Paper.

G. The arbitrator may request additional information and may make any other orders necessary to resolve the

entire matter.

H. The arbitrator shall issue a written decision resolving all the submitted issues within 30 days after receiving the Position Papers.

**8.5. Claims in excess of $50,000.**
Nothing herein contained shall be so construed as to preclude CM@Risk or CITY from commencing a legal action in relation to claims in excess of $50,000, but the sole legal remedy in relation to claims of $50,000 or less shall be binding, unappealable special arbitration as described above.

**ARTICLE 9-- REPRESENTATIVES OF THE PARTIES**

**9.1 City Representatives**

A. CITY designates the individual listed below as the City Engineer which individual has the authority and responsibility for avoiding and resolving disputes pursuant to Article 8: Sheina Hughes, Assistant Public Works Director/City Engineer., Mail Stop # 405, P.O. Box 4008, Chandler, AZ 85244-4008, (480) 782-3334.

B. CITY designates the individual listed below as its CITY's Representative, who shall be the single point of contact for CM@Risk, and who has the authority and responsibilities set forth herein: Tim Krawczyk, Project Manager, P. O. Box 4008, MS 407, Chandler, AZ 85244-4008, (480) 782-3362

**9.2 CM@Risk Representatives**

A. CM@Risk designates the individual listed below as its Principal-in-charge ("CM@Risk's Principal-in-charge"), which individual has the authority and responsibility for avoiding and resolving disputes: Dan Spitza, Achen-Gardner Engineering, LLC, 550 S. 79th Street, Chandler, AZ 85226, (480) 940-1300

B. CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibilities set forth herein: Majed Radwan, Achen-Gardner Engineering, LLC, 550 S. 79th Street, Chandler, AZ 85226, (480) 940-1300

**ARTICLE 10-- SUSPENSION AND TERMINATION**

**10.1 Termination for Convenience**

A. Upon receipt of written notice to CM@Risk, CITY may, at its discretion and without cause, elect to terminate this Contract. In such event, CITY shall pay CM@Risk only the direct value of its completed Contract Services and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and/or Sub consultants.

B. CM@Risk shall be entitled to profit and overhead on completed work only, but shall not be entitled to anticipated profit or anticipated overhead.

C. If CITY terminates this Agreement pursuant to this Subsection and proceeds with the Project through its employees, agents or third parties, CITY's rights to use the work product shall be as set forth in Section 14.17 hereof.

**10.2. CITY's Right to Perform and Terminate for Cause**

A. If CM@Risk persistently fails to prosecute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or to perform material obligations under the Contract Documents, then CITY, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth herein.

B. Upon the occurrence of an event set forth in Subsection 10.2 A above, CITY may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@Risk's receipt of such notice.

C. If CM@Risk, within such seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then CITY may declare the Agreement terminated for default by providing written notice to CM@Risk of such

declaration.

D. Upon declaring the Agreement terminated pursuant to Paragraph C above, CITY may employ any person or persons to complete the work and provide all of the required services and other items.

E. In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed prior to its default.

F. If CITY's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to CITY. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by CITY in connection with the reprocurement and defense of claims arising from CM@Risk's default.

G. If CITY improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Subsection 10.1.

**ARTICLE 11– INDEMNIFICATION**

**11.1. All Liability**

**A. For Professional Liability:**

To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by CM@Risk, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions CM@Risk may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than CM@Risk, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

**B. Correction Of Mistakes:**

CM@RISK shall be responsible for the completeness and accuracy of the work prepared or compiled under CM@RISK's obligation for this project and shall correct, at CM@RISK's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by CM@RISK. The cost of the design necessary to correct those errors attributable to CM@RISK and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to CM@RISK and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved CM@RISK's work shall in no way relieve CM@RISK of any of its responsibilities.

**C. For All Other Liabilities, Hazards And Exposures:**

To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of CM@Risk and alleged to have been caused in whole or in part by any act or omission of CM@Risk, anyone directly or indirectly employed by them or anyone for whose acts CM@Risk may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of CM@Risk, its agents, employees or representatives to fulfill CM@Risk's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to

have resulted from the errors, mistakes or omissions of CoC, (other than CM@Risk, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

**D. Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

**E. 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 indemnity in this paragraph.

**ARTICLE 12 – INSURANCE**

**12.1 General Requirements:**

A. CM@Risk, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++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 contract.

D. If any of the insurance policies are not renewed prior to expiration, payments to the CM@Risk may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CM@Risk.

E. All insurance policies, except Workers' Compensation 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 contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

F. CM@Risk's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, 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, except Workers' Compensation, 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 CM@Risk's acts, errors, mistakes, omissions, work or service.

H. The insurance policies may provide coverage which contain 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 CM@Risk. CM@Risk 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 CM@Risk 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 in excess of $25,000 will not be accepted except with permission of the Management Services Director/designee.. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CM@Risk to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit

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 CM@Risk with reasonable promptness in accordance with the CM@Risk'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 contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CM@Risk until such time as the CM@Risk shall furnish such additional security covering such claims as may be determined by the CITY.

**12.2 Proof of Insurance - Certificates of Insurance**

A. Prior to commencing work or services under this Agreement, CM@Risk shall furnish to CITY Certificates of Insurance, issued by CM@Risk'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's Risk Management Division approval of such Certificates.

B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.

C. All Certificates of Insurance shall identify the policies in effect on behalf of CM@Risk, 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 in the text of 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 CM@Risk of any deficiencies in such policies and endorsements, and such receipt shall not relieve CM@Risk from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of CM@Risk's obligations under this Agreement.

**12.3 Required Coverage**

Such insurance shall protect CM@Risk from claims set forth below which may arise out of or result from the operations of CM@Risk under this Contract and for which CM@Risk may be legally liable, whether such operations be by the CM@Risk or by a Sub-consultant or subcontractor 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 there from;

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 "I" "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 obligations of CM@Risk under the indemnification provisions set forth in subsection 11.1 herein.

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;

**12.3.1 Commercial General Liability - Minimum Coverage Limits:**
The Commercial General Liability insurance required herein shall be written for not less than $1,000,000 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 $1,000,000 per occurrence (or 10% per occurrence) and an aggregate of $2,000,000 (or 20% whichever is greater) in coverage will be acceptable. 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 CM@Risk's operations and products, and completed operations.

**12.3.2 General Liability - Minimum Coverage Limits**
A. The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Contractors, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than $1,000,000 or 10% of the contract cost and with a $2,000,000 aggregate.

B. Automobile Liability: CM@Risk 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 CM@Risk'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.

**12.3.3 Worker's Compensation and Employer's Liability:**
CM@Risk shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CM@Risk'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, CM@Risk will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CM@Risk.

**ARTICLE 13 – NOTICE**

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) three (3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid to the address indicated below or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

| | |
|---|---|
| To CITY OF CHANDLER | Contract Administration<br>Mail Stop 407<br>P.O. Box 4008<br>Chandler, AZ 85244-4008<br>480.782.3307 |
| Copy to City's Representative: | Tim Krawczyk, Project Manager<br>Contract Administration<br>P.O. Box 4008, Mail Stop 407<br>Chandler, AZ 85244-4008<br>480.782.3362 |

| | |
|---|---|
| To CM@Risk | Dan Spitza, P.E., Vice President<br>Achen-Gardner Engineering, LLC<br>550 S. 79th Street<br>Chandler, AZ 85226<br>(480) 940-1300<br>(480) 940-4576 FAX |
| To Project Designer | Denis Howe<br>Entellus, Inc.<br>2255 N. 44th Street, #125<br>Phoenix, AZ 85008-3279<br>602-244-2566<br>602-244-8947 FAX |

## ARTICLE 14 – GENERAL PROVISIONS

### 14.1 Interpretation and Intent

A. The Contract Documents are intended to permit the parties to complete the Contract Services and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

B. The CITY's Standard Construction General Conditions are incorporated herein by reference to the extent they are applicable to this Contract and to the extent the terms and conditions therein do not conflict with the terms and conditions of this Contract.

C. The Contract Documents form the entire agreement between CITY and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**14.2 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party. Any change in the scope of work, either additions or deletions shall not be effective and there shall be no additional payment therefore except approved in writing and signed by a duly authorized representative of each party.

**14.3 Time is of the Essence.** CITY and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**14.4 Mutual Obligations.** CITY and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

**14.5 Cooperation And Further Documentation.** The CM@Risk agrees to provide the CITY such other duly executed documents as shall be reasonably requested by the CITY to implement the intent of the Contract Documents.

**14.6 Assignment.** Neither CM@Risk nor CITY shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

**14.7 Successor ship** CM@Risk and CITY intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**14.8 Conflict In Language.** All services performed shall conform to all applicable CITY of Chandler codes, ordinances and requirements as outlined in the Contract Documents.

**14.9 Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the CITY and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of CITY

and the CM@Risk and not for the benefit of any other party.

**14.10 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under, and shall 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. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

**14.11 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the CITY the right to direct the CM@Risk as to the details of accomplishing the work or to exercise a measure of control over the work means that the CM@Risk shall follow the wishes of the CITY as to the results of the work only. These results shall comply with all applicable laws and ordinances.

**14.12 CITY's Right Of Cancellation.** All parties hereto acknowledge that this Agreements is subject to cancellation by the CITY of Chandler pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

**14.13 Survival.** All warranties, representations and indemnification's by the CM@Risk shall survive the completion or termination of the Contract Documents.

**14.14 Covenant Against Contingent Fees.** The CM@Risk 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 CITY Council, or any employee of the CITY of Chandler has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the CITY of Chandler shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**14.15 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**14.16 Headings.** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**14.17 Work Product.**

A. 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 in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the CITY and are to be delivered to the CITY before the final payment is made to the CM@Risk. In the event these documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk shall not unreasonably withhold, the CITY agrees to hold the CM@Risk harmless to the extent permitted by law from the legal liability arising out of the CITY's alteration, modification, or adaptation of the documents.

B. 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 sub consultants or personnel, during the course of performing the Contract Documents or arising out of the Project shall belong to the CM@Risk.

C. With this Contract, the CM@Risk and its subconsultants hereby grant a license to the CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or deliverables developed or created as a result of the Project and this Contract. This license also includes the making of derivative works. In the event that the derivative works require the CITY to alter or modify the documents, then the provisions of subsection apply.

**ARTICLE 15--DATA CONFIDENTIALITY**

**15.1 Data**

As used in the Contract Documents, 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 the Contract Documents.

**15.2 Confidentiality**
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 the Contract Documents is confidential and proprietary information belonging to the CITY.

**15.3 Written Consent Required**
The CM@Risk shall not divulge data to any third party without prior written consent of the CITY. The CM@Risk shall not use the data for any purposes except to perform the services required under this Contract Documents but may use and disclose such data as necessary to accomplish the services to be provided herein. These prohibitions shall not apply to the following data provided the CM@Risk has first given the required notice to the CITY:

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

B. 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

C. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the CM@Risk is subject.

**15.4 Notice to CITY**
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 CITY, The CM@Risk shall first notify the CITY as set forth in this section of the request or demand for the data. The CM@Risk shall give the CITY sufficient facts so that the CITY can be given an opportunity to first give its consent or take such action that the CITY may deem appropriate to protect such data or other information from disclosure.

**15.5 Copies to CITY**
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 CM@Risk shall promptly deliver, as set forth in this section, a copy of all data to the CITY. All data shall continue to be subject to the confidentiality agreements of the Contract Documents.

**15.6 Duty of CM@Risk**
The CM@Risk assumes all liability for complying with this Section 15 regarding the confidentiality of the data in its possession and agrees to compensate the CITY 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 shall be deemed to cause irreparable harm that justifies injunctive relief in court.

**ARTICLE 16--CONFLICT OF INTEREST**

CM@Risk 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 it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

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

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

**16.2 Adverse Actions**
Actions that are considered to be adverse to the CITY under the Contract Documents include but are not limited to:

A. Using data as defined in the Contract acquired in connection with the Contract Documents to assist a third party in pursuing administrative or judicial action against the CITY;

B. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and

C. Using data to produce income for the CM@Risk or its employees independently of performing the services under The Contract Documents, without the prior written consent of the CITY.

**16.3 No Conflict**
The CM@Risk represents that except for those persons, entities and projects identified to the CITY, the services to be performed by the CM@Risk under The Contract Documents are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

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

**ARTICLE 17 – COMPLIANCE WITH ARIZONA PROCUREMENT LAW**

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("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) (hereinafter "Contractor Immigration Warranty").

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

The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

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

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors 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. §35-397, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-397, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan.

IN WITNESS WHEREOF, two (2) identical counterparts of this contract each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein below named, on this day of 2008 .

CITY OF CHANDLER

MAYOR Date

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
480-782-3307

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney by:

SEAL

CONSTRUCTION MANAGER AT RISK

By: Signature

ADDRESS FOR NOTICE
Achen-Gardner Engineering, LLC
550 S. 79th Street
Chandler, AZ 85226
Phone: (480) 940-1300
FAX: (480) 940-4576

ATTEST: If Corporation

Secretary

**EXHIBIT A**
**PROJECT DESCRIPTION**

The project will construct improvements to Gilbert Road between Queen Creek Road and Hunt Highway in accordance with City of Chandler full arterial standards. Improvements shall include six through lanes, right and left turn lanes, curb, gutter, sidewalk, bike lanes, landscaped medians, water, sewer, and reclaimed lines, and all other infrastructure required by the intent of the project.

# EXHIBIT B
# FEE SCHEDULE

| Job Title | Contract Section | CEP | VPC | RPM | PE | CE DSP | FORM | PM | SENG | TR | PA | CA | Other | Total Hours |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Hourly Rate | | $125.00 | $108.10 | $100.80 | $79.20 | $64.80 | $105.00 | $93.50 | $105.00 | $51.70 | $56.10 | $34.90 | [illegible] | [illegible] |
| Project Bi-Weekly Meetings (24mo = 48ea @ 2hrs/ea) | 3.2.1&2 | 8.00 | 96.00 | 80.00 | 60.00 | 8.00 | 8.00 | 8.00 | 80.00 | | | | | 348.00 |
| 60% & 90% Plans Comment Review Meetings (6ea @ 2hrs/ea) | 3.2.1&2 | 6.00 | 12.00 | 12.00 | 12.00 | | 4.00 | 4.00 | 12.00 | | | | | 62.00 |
| GMP Negotiation Meetings (GMP = 3ea Meetings @ 4hrs/ea) | 3.2.1&2 | 8.00 | 12.00 | 12.00 | | | | 6.00 | 12.00 | | | | | 50.00 |
| General Stakeholder & Special Public Meetings (8ea @ 2hrs/ea) | 3.2.1&2 | 8.00 | 16.00 | 12.00 | 8.00 | | 4.00 | | | | | | | 48.00 |
| Utility Coordination Meetings (24ea @ 1hr/ea) | 3.2.1&2 | 6.00 | 24.00 | 24.00 | 18.00 | | 5.00 | | 18.00 | | | 5.00 | | 100.00 |
| Misc. Team Meetings (12ea @ 2hrs/ea) | 3.2.1&2 | 6.00 | 24.00 | 24.00 | 8.00 | 8.00 | 8.00 | 8.00 | 24.00 | 4.00 | | 8.00 | | 122.00 |
| Misc. Site Visits (8ea @ 2hrs/ea) | Misc. | 4.00 | 16.00 | 16.00 | 16.00 | 4.00 | 4.00 | 4.00 | 8.00 | | | | | 72.00 |
| Misc Pre and Post Meeting Coordination (48 ea) | Misc. | 8.00 | 48.00 | 24.00 | 8.00 | | | | 24.00 | | | | | 112.00 |
| Value Analysis Reviews and Reports (6ea @ 60% & 90%)(See 3.2.3 & 3.2.5) | 3.2.3 | | | | | | | | | | | | | 0.00 |
| Design Document/Constructability Review-General (2ea @ 60% & 90% for each of the 3 Phases) | 3.2.3, 5, 7 | 8.00 | 16.00 | 30.00 | 24.00 | 8.00 | 8.00 | 8.00 | 30.00 | 16.00 | | 4.00 | | 152.00 |
| Pot Hole and Utility Designation Related (i.e. Develop List, Mod List, Misc. Field Observation) | 3.2.3, 5, 7 | | 12.00 | 16.00 | 30.00 | 12.00 | | | 12.00 | | | | | 82.00 |
| Project Schedule (3ea @ 60%/90%/100% for each of the 3 Phases = 9ea) | 3.2.4 | 8.00 | 10.00 | 24.00 | 8.00 | | 8.00 | | 8.00 | | | | | 66.00 |
| Cost Model and Preliminary Estimate (3ea) (GMP Admin & Sub Select Excluded Here) | 3.2.6 | 8.00 | 80.00 | 12.00 | 8.00 | 8.00 | 8.00 | 16.00 | 320.00 | 40.00 | | 8.00 | | 508.00 |
| Subcontractor Pre-Qualification & Selection (3ea @ 1ea of the 3-Phase Submittals | 3.2.8 | 6.00 | 60.00 | 8.00 | 6.00 | | 6.00 | 8.00 | 48.00 | | | 12.00 | | 154.00 |
| GMP Proposal @ 90% (1ea of the 3-Phase Submittals = 3ea) | 3.2.8 | 18.00 | 180.00 | 48.00 | 24.00 | | 16.00 | 16.00 | 620.00 | 60.00 | | 18.00 | | 1,000.00 |
| Misc Weekly Admin and Clerical (60wks: Admin @ 1hr/wk Clerical @ 2hr/wk) | Misc. | | | | | | | | | | 60.00 | 120.00 | | 180.00 |
| Reimbursables Allowance (i.e. Printing, etc... of Plans, Specs, etc...) | Misc. | | | | | | | | | | | | $5,000.00 | |
| Year 2010 Labor Escalation Allowance | Misc. | | | | | | | | | | | | $5,284.05 | |
| Construction Management and Supervision Credit (Concurrent w/other COC Projects) | ALL | | | | (75.00) | | | | | | | | | (75.00) |
| TOTALS (HR's) | | 102.00 | 606.00 | 342.00 | 155.00 | 48.00 | 79.00 | 78.00 | 1216.00 | 120.00 | 60.00 | 175.00 | $10,284.05 | 2,981.00 |
| TOTAL ESTIMATED DESIGN PHASE SERVICES ($'s) | | $12,546.00 | $65,508.60 | $36,183.60 | $15,864.25 | $5,078.40 | $8,358.20 | $8,880.30 | $128,652.80 | $6,210.00 | $3,381.00 | $6,282.50 | $10,284.05 | $307,229.70 |
| | | $296,945.65 | | | | | | | | | | | $10,284.05 | |
| | | Subtotal Not-to-Exceed Estimate of Hourly Labor | | | | | | | | | | | Reimb | |
| Note: Following percentages are based on one (1) individual for Twenty-Four (24) months at 172 Hrs/Mo. | | 2.47% | 14.68% | 8.28% | 3.75% | 1.16% | 1.91% | 1.89% | 29.46% | 2.91% | 1.45% | 4.24% | N/A | 72.21% |

NOTES / INCLUSIONS / EXCLUSIONS / (1) Rates exclude Sales Tax
CLARIFICATIONS:

**EXHIBIT C**

**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 State contract meet all conditions contained herein.

| |
|---|
| **Project Number/Division: ST0809-251** |
| **Name (as listed in the contract): Gilbert Road Improvements (Queen Creek Road to Hunt Highway)** |
| **Street Name and Number: Gilbert Road (Queen Creek Road to Hunt Highway** |
| **City: Chandler State: AZ Zip Code:** |

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 Designee:**

_____

**Printed Name:** _____

**Title:**_____

**Date (month/day/year):**_____