

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
14010 N. EL MIRAGE ROAD
6:00 PM - TUESDAY, FEBRUARY 16, 2016**

Members of the El Mirage City Council will attend either in person or by telephone conference call.

Please silence all electronic communication devices (including cell phones and pagers) before the meeting is called to order. Thank you.

Note: The Common Council of the City of El Mirage, by a duly passed motion, may vote in public session to adjourn to executive session on any agenda item in conformation with A.R.S. Section 38.431.03 including legal advice from the City Attorney.

Agenda

I. ROLL CALL

Mayor Lana Mook
Councilmember Roy Delgado
Councilmember Jack Palladino
Councilmember David Shapera

Vice Mayor Joe Ramirez
Councilmember Bob Jones
Councilmember Lynn Selby

II. CALL TO ORDER

Pledge of Allegiance
Moment of Silence
Silence Cell Phones & Pagers

III. PRESENTATION

- P1.** Presentation to Council from Mayor Lana Mook regarding the City of El Mirage 2016 State of the City (Mayor Mook)
- P2.** Presentation and discussion of public safety retirement systems (PSPRS) including recent proposed legislation (Finance)

IV. CALL TO THE PUBLIC

Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three (3) minutes per person and shall be addressed to the City Council as a whole. At the conclusion of the Call to the Public, individual City Council Members may (1) respond to criticism made by

those who have spoken (2) direct staff to review or respond to the matter, and/or (3) direct that the matter be put on a future agenda.

V. CONSENT AGENDA

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda Item, that item will be removed from the Consent Agenda and voted on separately.

1. Consideration and action approving the minutes of the Regular Council Meeting held Tuesday, January 19, 2016. (City Clerk)
2. Consideration and action to approve an Intergovernmental Agreement (IGA) between the city of Surprise and the city of El Mirage for emergency water services. (Public Works)

VI. REGULAR AGENDA

- A. Consideration and action to authorize the City Manager to enter into a Construction Manager at Risk (CM@Risk) Construction Phase services agreement with Haydon Building Corp to provide construction phase services for the new El Mirage City Hall (EM15-F01) in an amount not to exceed \$6,600,000. (Development & Community Services)
- B. Consideration and action to approve Resolution R16-02-03 calling for a Primary and General Election in 2016, designating the election dates and purpose of the elections, designating the deadline for voter registration, designating the election format, and designating the place and first and last date for candidates to file nomination papers. (City Clerk)
- C. Consideration and action to approve Resolution R16-02-04 adopting a Compensation Plan for fiscal year 2016-17. (Finance)

VII. CITY MANAGER SUMMARY OF CURRENT EVENTS

The City Council may not act upon any matter in the City Manager's summary but may have general comment or questions. Items to be discussed will include, but not be limited to, the following: the El Mirage Car Show.

VIII. MAYOR'S COMMENTS and COUNCIL SUMMARY OF CURRENT EVENTS

The Mayor and City Council may not discuss or act upon any matter in the summary unless the specific matter is properly noticed for legal action.

IX. ADJOURNMENT

Accommodations for Individuals with Disabilities - Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 12145 NW Grand Avenue, El Mirage, Arizona, (623) 876-2943, TDD (623)933-3258, or FAX (623) 876-4603. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.

AFFIDAVIT OF POSTING – CITY COUNCIL MEETING OF FEBRUARY 16, 2016

I hereby certify that this agenda was posted by 5:00 p.m. on February 12, 2016 at the following locations:

1) the City of El Mirage Exterior Bulletin Board at 12145 N.W. Grand Avenue, and 2) the City of El Mirage website at www.cityofelmirage.org.


Sharon Antes, City Clerk

REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: <u>02/10/2016</u> DATE ACTION REQUESTED: <u>02/16/2016</u> <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	TYPE OF ACTION: ___ RESOLUTION # _____ ___ ORDINANCE # _____ <input checked="" type="checkbox"/> OTHER: Presentation	SUBJECT: Presentation to Council from Mayor Lana Mook regarding the City of El Mirage 2016 State of the City.
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TO: Mayor and Council
FROM: Mayor Lana Mook <i>LMW DS LM</i>
RECOMMENDATION: N/A
PROPOSED MOTION: N/A
ATTACHMENTS: None

DISCUSSION: Mayor Lana Mook will present the City of El Mirage 2016 State of the City.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

Finance Director:

Robert Nilles 2/11/16
 Robert Nilles Date

Approved as to form:

Robert M. Hall 2/11/16
 Robert M. Hall, City Attorney Date

City Manager:

Dr. Spencer A. Isom 2/11/16
 Dr. Spencer A. Isom Date

REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: <u>02/10/2016</u> DATE ACTION REQUESTED: <u>02/16/2016</u> <u> X </u> REGULAR <u> </u> CONSENT	TYPE OF ACTION: <input type="checkbox"/> RESOLUTION # _____ <input type="checkbox"/> ORDINANCE # _____ <input checked="" type="checkbox"/> OTHER: Discussion of Public Safety Retirement Systems - PSPRS	SUBJECT: Presentation and discussion of public safety retirement systems (PSPRS) including recent proposed legislation.
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TO: Mayor and Council
FROM: Robert Nilles – Deputy City Manager/Finance Director
RECOMMENDATION: None
PROPOSED MOTION: Presentation and discussion only
ATTACHMENTS: None

DISCUSSION: Public retirement systems are becoming a larger portion of General Fund budgets. Discussion and fact finding has been initiated to identify how the systems got to where they are and what can be done to lessen the impact on the General Fund budgets. Recent legislation has been introduced that is intended to relieve the impact on General Fund budgets. The proposed legislation and its impacts will be discussed.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

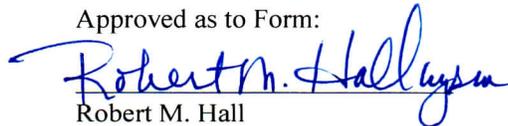
BALANCE IN LINE ITEM IF APPROVED: N/A

Finance Director:

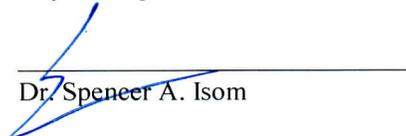

 Robert Nilles

2/11/16
 Date

Approved as to Form:

 2/11/16
 Robert M. Hall Date

City Manager:


 Dr. Spenceer A. Isom

2/11/16
 Date

REQUEST FOR COUNCIL ACTION

<p>DATE SUBMITTED: <u>01/28/2016</u></p> <p>DATE ACTION REQUESTED: <u>02/16/2016</u></p> <p><input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> CONSENT</p>	<p>TYPE OF ACTION:</p> <p><input type="checkbox"/> RESOLUTION # _____</p> <p><input type="checkbox"/> ORDINANCE # _____</p> <p><input checked="" type="checkbox"/> OTHER: <u>Approval of Minutes</u></p>	<p>SUBJECT: Consideration and action to approve minutes of the Regular Council Meeting held Tuesday, January 19, 2016.</p>
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<p>TO: Mayor and Council</p>
<p>FROM: Sharon Antes, City Clerk <i>SA</i></p>
<p>RECOMMENDATION: Approve minutes from the January 19, 2016 Regular Council meeting.</p>
<p>PROPOSED MOTION: I move to approve the minutes of the January 19, 2016 Regular Council Meeting as presented.</p>
<p>ATTACHMENTS: Draft Minutes</p>

DISCUSSION: Draft minutes are attached for Council's review and approval.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

Finance Director:

Robert Nilles

Robert Nilles

2/11/16

Date

Approved as to Form:

Robert M. Hall 2/11/16

Robert M. Hall Date

City Manager:

Spencer A. Isom

Dr. Spencer A. Isom

2/11/16

Date

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
14010 N. EL MIRAGE ROAD
6:00 PM - TUESDAY, JANUARY 19, 2016**

Minutes

I. ROLL CALL

Present: Mayor Lana Mook, Vice Mayor Joe Ramirez, Councilmember Roy Delgado, Councilmember Bob Jones, Councilmember Jack Palladino, Councilmember Lynn Selby, Councilmember David Shapera

II. CALL TO ORDER

Meeting was called to order at 6:00 pm
Pledge of Allegiance
Moment of Silence
Silence Cell Phones & Pagers

III. CALL TO THE PUBLIC

Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three (3) minutes per person and shall be addressed to the City Council as a whole. At the conclusion of the Call to the Public, individual City Council Members may (1) respond to criticism made by those who have spoken (2) direct staff to review or respond to the matter, and/or (3) direct that the matter be put on a future agenda.

No Comment Cards were received.

IV. CONSENT AGENDA

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda Item, that item will be removed from the Consent Agenda and voted on separately.

1. Consideration and action approving the minutes of the Regular Council Meeting held Tuesday, January 5, 2016. (City Clerk)
2. Consideration and action to approve the destruction of personnel records that have reached the end of their retention period as authorized under A.R.S. §41-151.12. (Human Resources)
3. Consideration and action to approve an Intergovernmental Agreement (IGA) between the Dysart Unified School District and the City of El Mirage for continuing the existing School Resource Officer (SRO) program. (Police Department)

Vice Mayor Ramirez moved to approve all Consent Agenda Items as presented; seconded by Councilor Delgado. Motion carried unanimously (7/0).

V. REGULAR AGENDA

- A. Consideration and action to authorize the City Manager to enter into a construction contract with Sunland Asphalt to construct roadway improvements along Thunderbird Road and El Mirage Road in the total amount of \$10,886,747 including contingency. (Development & Community Services)

Community Development Director Jorge Gastelum presented a PowerPoint presentation regarding the improvements on El Mirage Road. He reviewed the map, pointing out the different phases of the project. An IGA with ADOT was approved on May 12, 2011 and the request being considered is for Phases 4 and 6. Cost breakdowns for MCDOT and city contributions, along with reimbursement ALCP amounts were presented. The bid opening for this portion of the total project was held December 17, 2015 for the Thunderbird Road section from 127th Avenue to El Frio Street and the El Mirage Road section from Cactus Road to Grand Avenue. Five bids received ranged from \$9,897,043.10 to \$12,585,643.58 with Sunland Asphalt being the lowest responsible bidder. Staff recommended approval.

Councilor Shapera asked where the 99,000 square feet of concrete pavers were to be used, where the tree planters, at \$16,000 each, were to be located, and whether the Thunderbird Road sidewalk would be meandering. Mr. Gastelum explained the pavers would be used on the ends of the raised median, the planters will go along the sidewalk, and the sidewalk will be straight and 8-12 feet wide.

Councilor Delgado asked if the entrance to the post office on Thunderbird Road would be safe and accessible for the residents. Mr. Gastelum stated the empty lot next to the post office was purchased to provide a new access and more parking. He also asked if La Fondita's restaurant is to be demolished or stay and was advised by Mr. Gastelum that the building will stay but the outside canopy is to be demolished and the City has already paid for that portion.

Vice Mayor Ramirez stated he is glad the pavers are being utilized because they are easy maintenance and cost less to repair. The post office has always had ingress problems and he is glad to see that being rectified. Councilor Delgado asked if there will be restrictions or conditions on the La Fondita refurbishment for them to follow stipulations of the Thunderbird Overlay District and Mr. Gastelum pointed out the Thunderbird Overlay District mostly addresses parking positioning.

Councilor Selby asked whether the city would have input on the replacement façade of La Fondita Restaurant since the patio section was being removed and Mr. Gastelum stated the normal process of site plan approval would be followed and he would also check on the condemnation offer for that property.

Dr. Isom commended Mr. Gastelum and his staff for doing a great job in managing these large projects. They are quick to mobilize and he is confident staff will notify residents of

the any inconveniences well in advance and keep the public up-to-date and informed through the various stages of numerous projects currently underway.

Mr. Gastelum stated the proposed contractor, Sunland, is the same contractor already awarded and working on the roadway project between Peoria Avenue and Cactus Road which allowed for a savings on mobilization and is a benefit to the community.

Mayor Mook asked if the Sunland representative was present and Mr. Gastelum introduced Project Manager Mark Soyster. Mr. Soyster commended Mr. Gastelum and his staff for the professional working relationship they have developed and noted the pace of these projects will soon pick up. Mayor Mook stated there will be numerous road improvement projects underway simultaneously and it will be challenging during the process, but, the end result will be a major benefit to the community when completed.

Councilor Delgado pointed out that he and Councilor Palladino are on the CDAC Board and asked when the water line will be completed on El Mirage Road. Mr. Gastelum reported it must be completed in five months under the CDBG timeline which will be by the end of June.

Vice Mayor Ramirez moved to enter into a construction contract with Sunland Asphalt to construct roadway improvements along Thunderbird Road and El Mirage Road in the total amount of \$10,886,747 including contingency; seconded by Councilor Delgado. Motion passed unanimously (7/0).

- B. Consideration and action to authorize execution of the IGA with ADOT to reconstruct the U.S. 60 (Grand Avenue) / Thunderbird Road intersection in an amount not to exceed \$30,000. (Development & Community Services)

Community Development Director Jorge Gastelum presented a PowerPoint presentation regarding the IGA with ADOT to reconstruct the U.S. 60 (Grand Ave.) and Thunderbird/Thompson Ranch Intersection. He reviewed the map showing the areas and proposed changes. The estimated cost to the City for enhancements not covered by the IGA is \$13,578 of which 70% is ALCP reimbursable; the City's portion of the estimated funding is \$4,073. Up to \$30,000 (at 70% reimbursable) for unanticipated potential enhancements is requested to prevent delay should costs vary or additional enhancements be necessary. The design is complete, bid opening is scheduled early March, and a Notice to Proceed to the contractor is anticipated by early May. As a part this intersection improvement, BNSF will close Thompson Ranch Road for railroad reconstruction from mid-June through mid-July, 2016 and the entire intersection improvements are anticipated to be complete by Summer 2017.

Vice Mayor Ramirez moved to authorize execution of the IGA with ADOT to reconstruct the US 60 (Grand Avenue) / Thunderbird Road intersection in an amount not to exceed \$30,000; seconded by Councilor Delgado. Motion carried unanimously (7/0).

- C. Consideration and action to approve Resolution R16-01-02, adopting Valley Metro's Title VI Plan which includes a Language Assistance Plan and Public Participation Plan for the

purpose of complying with Federal and State and Regional transit mandates.
(Administration)

Assistant to City Manager and Grants Writer Janeen Gaskins provided a PowerPoint presentation regarding the transit requirements as set forth in the new FTA Circular 4702.1B. Title VI Disclosure prohibits discrimination by recipients of Federal financial assistance on the basis of race, color and national origin, including the denial of meaningful access for limited English proficient persons. These revised regulations also included an environmental justice component. The City of Phoenix is the primary recipient of all FTA funding and monitors all FTA funding, sub-grantees and sub-recipients. Valley Metro and the City of Phoenix developed the regional Title VI Program. The City of El Mirage is a sub-recipient of FTA funding for transit services. The City of El Mirage is a pass-through; Valley Metro provides El Mirage's transit needs and has the appropriate process in place to meet the Federal Title VI requirements. The City's contract with Valley Metro includes language to ensure that they provide El Mirage residents with the appropriate reporting options. The City of Phoenix requires El Mirage to formally adopt Valley Metro's Title VI processes regarding the Language Assistance Plan and Public Participation Plan. El Mirage is responsible for making the plan available to residents by formally adopting it, posting it on the website and posting it in the Senior Center and any other relevant locations.

Vice Mayor Ramirez moved to approve Resolution R16-01-02, adopting Valley Metro's Title VI Plan which includes a Language Assistance Plan and Public Participation Plan for the purpose of complying with Federal and State and Regional transit mandates; seconded by Councilor Delgado. Motion carried unanimously (7/0).

VI. CITY MANAGER SUMMARY OF CURRENT EVENTS

The City Council may not act upon any matter in the City Manager's summary but may have general comment or questions. Items to be discussed will include, but not be limited to, the following:

1. El Mirage Public Safety Day

Intergovernmental and Public Relations Manager Amber Wakeman reminded everyone of the El Mirage Public Safety Day being held Saturday, January 23, 2016 at Gateway Park from 10:00 AM to 2:00 PM. There will be Fire and Police displays, exhibits and demonstrations. A Kid Zone will provide activities and attractions and admission is free for everyone. The Arizona SciTech Festival will take place at the event and Dysart Unified School District will have exhibits. Wal-Mart has generously donated three children's bicycles to be awarded to contest winners at the event.

2. New Employees

Director of Court Services Rod Wettlin introduced Juan Delgado as the Court Judicial Supervisor who will essentially be the second in command. Mr. Delgado comes to the City with ten years' court experience in Scottsdale, Glendale and California. Judge Morgan expressed a need for future succession planning at the Court and this position will provide that coverage. Mr. Delgado addressed Council stating he has been working one week and is looking forward to his work with the City of El Mirage.

Dr. Isom reported a side note regarding the IGA with ADOT to reconstruct the US (Grand Avenue)/Thunderbird Road intersection. For the past several years, the City has partnered with ADOT and MAG. The City does not own the canal along Grand Avenue and ADOT is looking to reduce their footprint along the Grand Avenue corridor. He has proposed to MAG and ADOT that in exchange for their reconstruction of this area, the city would consider maintaining. ADOT has agreed to proceed with designing the original concept and the city will work with MAG and ADOT to secure funding for this project.

VII. MAYOR’S COMMENTS and COUNCIL SUMMARY OF CURRENT EVENTS

The Mayor and City Council may not discuss or act upon any matter in the summary unless the specific matter is properly noticed for legal action.

Councilor Shapera reported the Thompson Ranch Elementary School will be holding “Reading for America” from March 7 – 11, 2016. The Council is invited to participate by reading to the students. He advised those interested in participating should call the Assistant Principal to arrange a reading time; he also invited the Fire Chief and the Police Chief.

Vice Mayor Ramirez is excited to see construction moving forward. There is a slight inconvenience now but the end result will be fantastic. Most people don’t understand the obstacles you have to overcome to keep projects going; he thanked the staff for all their efforts in successfully juggling major concurrent projects.

Councilor Delgado thanked Mr. Dobrosky and staff for their quick response to repair substantial sized pot holes on Dysart Road.

VIII. ADJOURNMENT - The meeting was adjourned at 6:37 pm.

Lana Mook, Mayor

ATTEST:

Sharon Antes, City Clerk

I hereby certify the aforementioned minutes are a true and accurate record of the Regular Council Meeting held on Tuesday, January 19, 2016 and a quorum was present.



Sharon Antes, City Clerk

REQUEST FOR COUNCIL ACTION

<p>DATE SUBMITTED: 02/02/2016</p> <p>DATE ACTION REQUESTED: 02/16/2016</p> <p><u> </u> REGULAR <u> X </u> CONSENT</p>	<p>TYPE OF ACTION:</p> <p><u> </u> RESOLUTION # _____</p> <p><u> </u> ORDINANCE # _____</p> <p><u> X </u> OTHER: IGA</p>	<p>SUBJECT: Consideration and action to approve an Intergovernmental Agreement (IGA) between the City of Surprise and the City of El Mirage for emergency water services.</p>
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<p>TO: Mayor and Council</p>
<p>FROM: Larry Dobrosky, Deputy City Manager <i>LD</i></p>
<p>RECOMMENDATION: Approve an IGA between the City of Surprise and the City of El Mirage for emergency water services.</p>
<p>PROPOSED MOTION: I move to approve the IGA between City of Surprise and the City of El Mirage as presented.</p>
<p>ATTACHMENT: IGA and Map</p>

DISCUSSION: According to the State of Arizona Administrative Code, R18-4-204(B)(1): "Water providers must have provisions for an alternate source of water during an emergency." This IGA will satisfy the alternate source of water rule for both El Mirage and Surprise through two (2) separate inter-connections, linking the water distribution systems located on Dysart Road to be used in case of an emergency.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT(S): N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

Finance Director:

Robert Nilles 2/11/16
Robert Nilles Date

Approved as to form:

Robert M. Hall 2/11/16
Robert M. Hall, City Attorney Date

City Manager:

Spencer A. Isom 2/11/16
Dr. Spencer A. Isom Date

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SURPRISE AND THE CITY OF EL MIRAGE FOR EMERGENCY WATER SERVICE

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SURPRISE AND THE CITY OF EL MIRAGE IS FOR TEMPORARY WATER SERVICE (“Agreement”) and is entered into as of _____, 2016, by and between the City of Surprise (“Surprise”), an Arizona municipal corporation, and the City of El Mirage (“El Mirage”), an Arizona municipal corporation. Collectively, Surprise and El Mirage are sometimes referred to as the “Parties” and each is individually referred to as a “Party.”

RECITALS

WHEREAS, El Mirage and Surprise are authorized by law to operate public water delivery systems to provide potable water to their drinking water customers;

WHEREAS, El Mirage and Surprise serve potable water to their customers within their respective Service Areas pursuant to service area rights under A.R.S. Title 45, Chapter 2, Article 6, and in their capacities as municipal water providers pursuant to Article 13, Section 5 of the Arizona Constitution. El Mirage and Surprise have two interconnections between their respective water systems located at:

1. 33⁰ 35' 19.56" N, -112⁰ 20' 31.65" W *West side of Dysart Road North of Varney Road*
2. 33⁰ 37' 12.42" N, -112⁰ 20' 32.05" W *North West corner of Dysart Road and Country Gable Drive.*

WHEREAS, El Mirage and Surprise desire to assist each other by delivering water through interconnects, should emergency or other scenario arise in which it would be in the best interests of the Parties to deliver said water.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

STATUTORY AUTHORIZATION

1. SURPRISE is empowered by Arizona Revised Statutes Section 11-952 to enter into this agreement, and has authorized the undersigned to execute this agreement on behalf of SURPRISE.
2. EL MIRAGE is empowered by Arizona Revised Statutes Section 11-952 to enter into this agreement, and has authorized the undersigned to execute this agreement on behalf of EL MIRAGE.

TERMS OF AGREEMENT

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference as if fully set forth and are acknowledged and agreed to by the Parties.
2. Purposes. The Parties desire to enter into this Agreement for the purpose as provided in the recitals.
3. Authority. The Parties, as public agencies, are authorized and empowered to enter into this Agreement pursuant to A.R.S. § 11-951 and 11-952 and the respective provisions of their respective Charter or other governing authority for the provision of services or for joint or cooperative action.
4. Term. This Agreement shall be for a term of five (5) years after the Agreement becomes effective, unless terminated sooner as provided herein, with the option of two (2) five (5) year renewals. This Agreement will automatically renew at the expiration of first five (5) years, unless a Party provides a notice of non-renewal in writing.
5. Water Rates and Payment. Using only the volumetric rate, the purchase price for water delivered will be in accordance with the respective delivering Party's Commercial rate plus water recharge fee, state, county, city taxes and surcharge taxes. Monthly base rates will not be charged. The delivery party shall provide the receiving party with an invoice for water delivered in a calendar month no later than forty-five (45) days following that calendar month. If available, the receiving party may use long-term storage credits to fulfill the volume owed to the delivering party, however the required transfer form must be submitted to the Arizona Department of Water Resources prior to the close of business of the calendar year in which water was provided.
6. Operation and Maintenance. The Parties will jointly develop and annually review a plan of operation and maintenance for this Agreement. The plan will at a minimum outline routine interconnect inspections, an interconnect procedure, a water quality and quality emergency event process, and at least one annual testing protocol.
7. Ownership and Operation. Notwithstanding Section 8 above, nothing in this Agreement creates, grants, or assigns any ownership interest, whether legal or equitable, or maintenance or service obligation, to either Party in the other Party's water system. El Mirage's water system will remain solely within the ownership, control, and responsibility of the City of El Mirage, and likewise, Surprise's water system will remain solely within the ownership, control, and responsibility of the City of Surprise. Each party will own, operate, maintain, and service, at its sole expense, all facilities, pipelines, equipment and materials within its respective water system. Furthermore, this Agreement does not create a partnership, joint venture, or any other legally recognizable association between the Parties.

8. Quantity and Quality. This agreement does not obligate or require either party to provide a minimum quantity of water to the other party. Delivery of water is at the sole discretion of each Party. The water delivered will meet the Federal Primary Drinking Water standards for potable water at the point of delivery; however neither Party is responsible or guarantees the quality of delivered water beyond the point of delivery. Water quality sampling data will be provided at the request of each Party prior to delivery.
9. Water Rights. Each Party acknowledges that this is an agreement for the purpose of water delivery only and does not create nor grant any water ownership rights(s) to the other Party's water.
10. Impossibility, Impracticability, Frustration of Purpose. Each Party acknowledges that there exist scenarios, which may make the performance of this contract impossible, impracticable, or frustrated by no fault of the non-performing Party. In such event the non-performing Party shall be released from its performance under this contract and no liability shall accrue against that Party for damages or equitable relief.
11. Termination. Either party, upon thirty days' notice of a material default in performance to the other, and failure of the defaulting party to remedy such default within the thirty days' notice period, may terminate this contract without further obligation or penalty.
12. Fund Appropriation Contingency. Each Party acknowledges that the continuation of this Agreement is subject to the budget of the other Party providing for the appropriation of funds to cover the subject matter of this Agreement as an expenditure. The City cannot assure that the budget item for funding this Agreement will be approved in the future. In such event, the respective Party may terminate this Agreement.
13. Indemnification. To the extent permitted by law, each Party (as "indemnitor") agrees to indemnify, defend and hold harmless the other Party, its officers, employees, and agents (collectively, the "indemnitee") from and against any and all claims, losses, liability, penalties, demands, actions, proceedings or suits, of any kind and description, whether judicial, quasi-judicial or administrative in nature, costs or other expenses including reasonable attorney's fees (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, active or passive negligence, misconduct, or other fault (including a condition, characteristic, or status of the water system) of the indemnitor, its officers, officials, agents, employees or volunteers.
14. Notices. Any notice provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

If to El Mirage:

City Manager
City of El Mirage
12145 NW Grand Ave
El Mirage, AZ 85335

If to Surprise:
City Manager
City of Surprise
16000 N. Civic Center Plaza
Surprise, AZ 85374

or such other addresses as each party may notify one another in writing.

15. Cancellation. Notice is hereby given of the provisions of A.R.S. § 38-511, as amended. By this reference, the provisions of that statute are incorporated in this Agreement to the extent of their applicability to contracts of the nature of this Agreement under the laws of the State of Arizona.
16. Attorney's Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

As an alternative to filing a law suit to resolve the dispute, the parties may elect to arbitrate the dispute. Each party shall select a competent and impartial arbitrator. The two selected arbitrators shall appoint a third arbitrator. If the two appointed arbitrators cannot agree on a third, they may petition a judge having competent jurisdiction to select the third arbitrator, or they may resign their appointment jointly or individually so that the parties may renew the selection process. The written award of two of the three arbitrators shall bind the parties. The cost of the arbitrators and any expert witnesses shall be borne by the party that hired them. The cost of the third arbitrator and other expenses of the arbitration shall be shared equally by the parties. The arbitration shall take place in the City of El Mirage. State court rules of procedure and evidence shall be governing.
17. Governing Law. The terms, conditions, and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
18. No Party the Drafter. This Agreement is the product of negotiation between the Parties, and no Party is deemed the drafter of this Agreement.
19. No Waiver. The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.
20. Authority and Responsibility. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.

21. Merger. This Agreement constitutes the entire understanding between the Parties regarding the subject matter of this Agreement, supersedes any and all previous understandings between the Parties (including any letter of intent or memorandum of understanding) regarding the subject matter of this Agreement. Neither of the Parties has entered into this Agreement in reliance upon any written or oral representation provided by the other Party.
22. Modification or Waiver. This Agreement shall not be modified, extended, or waived in whole or in part except in writing by mutual consent of the Parties and signed by those persons with authorization.
23. Assignment. Neither Party will assign this Agreement or the rights and privileges herein, in whole or in part.
24. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to, or rights in, third parties not parties to this Agreement.
25. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which when executed and delivered shall be deemed an original, and all such counterparts shall together constitute one original Agreement. All signatures need not be on the same counterpart.
26. Headings. Section and Paragraph headings used in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of any provision of this Agreement.
27. Severability. If any provision or any portion of a provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule, or regulation, or by order of or judgment of a court such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement, as each provision of this Agreement shall be deemed to be severable from all other provisions hereof.
28. Authorizations. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign, and that no further action or approvals are necessary before execution of this Agreement.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

CITY OF SURPRISE

By _____
Sharon Wolcott
Mayor

Date _____

ATTEST

By _____
City Clerk

APPROVED AS TO FORM

By _____
City Attorney

CITY OF EL MIRAGE

By _____
Lana Mook
Mayor

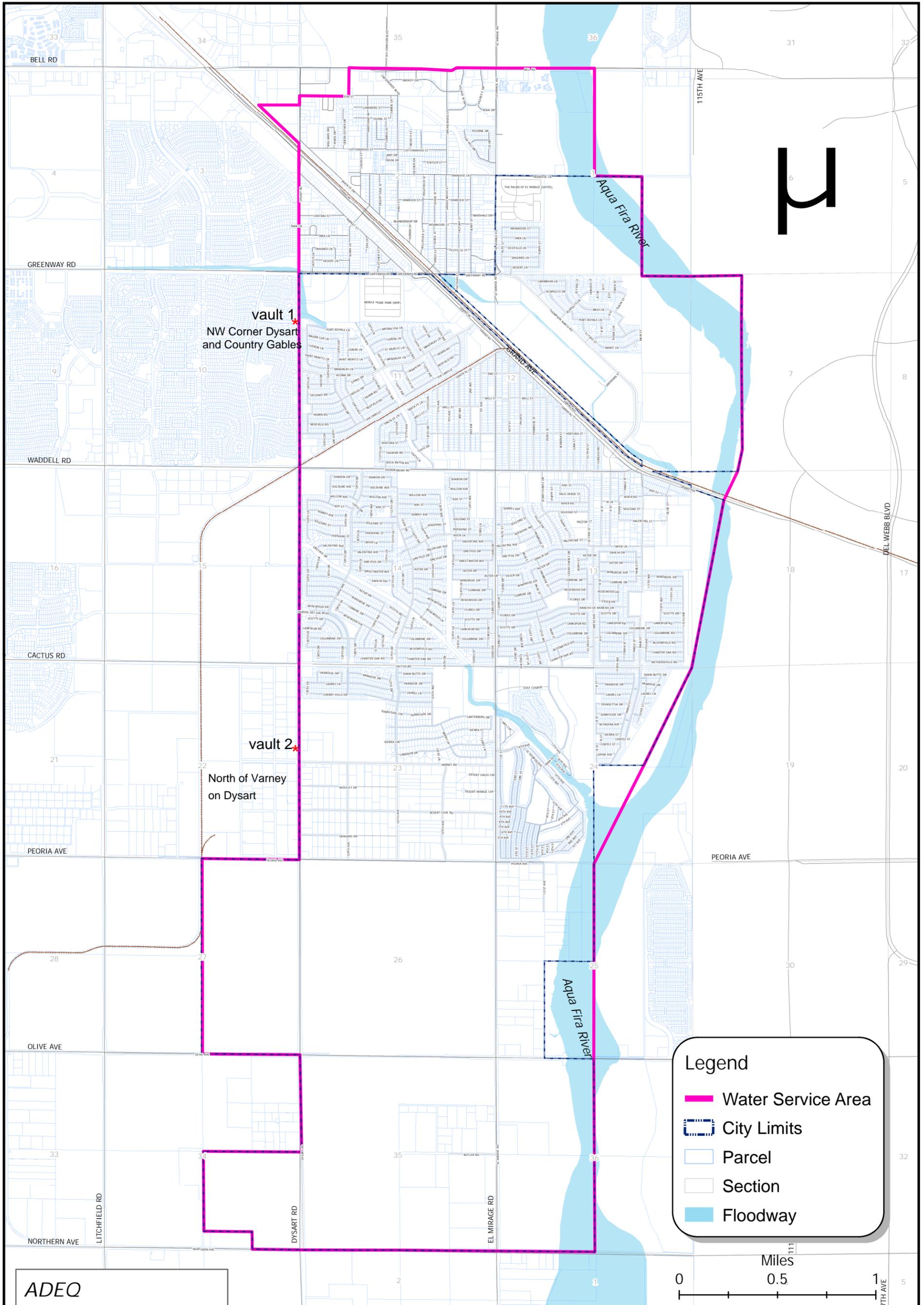
Date _____

ATTEST

By _____
City Clerk

APPROVED AS TO FORM

By _____
City Attorney



ADEQ
PWSID# 04 07-091

ADWR
Community Water System ID# 91-000221.0000

City of El Mirage
Technology Services / GIS
12145 NW Grand Ave.
El Mirage, Arizona 85335

May 16, 2008





REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: <u>02/03/2016</u> DATE ACTION REQUESTED: <u>02/16/2016</u> <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	TYPE OF ACTION: <input type="checkbox"/> RESOLUTION # _____ <input type="checkbox"/> ORDINANCE # _____ <input checked="" type="checkbox"/> OTHER: Contract Consideration	SUBJECT: Consideration and action to authorize the City Manager to enter into a Construction Manager at Risk (CM@Risk) Construction Phase services agreement with Haydon Building Corp to provide construction phase services for the new El Mirage City Hall (EM15-F01) in an amount not to exceed \$6,600,000.
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TO: Mayor and Council
FROM: Jorge Gastelum, Director of Development & Community Services/City Engineer <i>JG</i>
RECOMMENDATION: Approval to authorize the City Manager to enter into a Construction Manager at Risk (CM@Risk) – Construction Phase services agreement with Haydon Building Corp to provide construction phase services for the new El Mirage City Hall (EM15-F01) in an amount not to exceed \$6,600,000.
PROPOSED MOTION: I move we approve entering into a contract with Haydon Building Corp as recommended.
ATTACHMENTS: Construction Manager at Risk (CM@Risk) – Construction Phase Services Agreement, Haydon Building Corp’s Guarantee Maximum Price (GMP). Plans and City Specifications for this project are on file in the City Clerk’s office for review.

DISCUSSION: Haydon Building Corporation was selected to provide the Construction Manager at Risk (CM@Risk) services for the new city hall through Solicitation for Request for Qualifications in accordance with Arizona Revised Statutes Code 34 and the City of El Mirage Procurement Code.

FINANCIAL IMPACT: \$6,600,000

DEPARTMENT LINE ITEM ACCOUNT: 10-690-668

BALANCE IN LINE ITEM IF APPROVED: \$261,580.57

Finance Director:

Robert Nilles 2/11/16
 Robert Nilles Date

Approved as to form:

Robert M. Hall 2/11/16
 Robert M. Hall, City Attorney Date

City Manager:

Dr. Spencer A. Isom 3/10/16
 Dr. Spencer A. Isom Date

CITY OF EL MIRAGE, ARIZONA

DCS – Engineering Division

CITY OF EL MIRAGE – CITY HALL

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES**

PROJECT NO. EM15-F01

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**Construction Manager at Risk
Construction Services**

Project No. EM15-F01

THIS CONTRACT is made and entered into on the 17th day of February, 2016, by and between City of El Mirage, hereinafter designated the "City" and Haydon Building Corp, hereinafter called the "Construction Manager at Risk" or "CM@Risk"

RECITALS

- A. The City engages the CM@Risk to perform construction services for the project known and described as the **City of El Mirage – City Hall**, Project No. EM15-F01, herein called the "Project".
- B. To undertake the design of said Project, the City has entered into a contract with Architekton, hereinafter referred to as the "Design Professional".
- C. The CM@Risk has represented to the City the ability to provide construction management services and to construct the Project and based on this representation the City engages the CM@Risk to provide these services and construct the Project.
- D. A previous contract has been executed between City and CM@Risk to perform design phase services.

AGREEMENT

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

Article 1 - Definitions

"Agreement" or "Contract" This written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

"Change Order" A written order issued by the City to the CM@Risk to make changes in the Work or to perform extra Work, and setting forth conditions for payment and/or adjustment in time of completion.

"City" ("Owner" or "OWNER") The City of El Mirage, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services is to be provided pursuant to said Contact.

"CM@Risk" The firm selected by the City to provide construction services as detailed in this Agreement.

“Contingency, CM@Risk” (Contractor’s) A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from project circumstances. The amount of the CM@Risk’s Contingency shall be negotiated as a separate line item in the GMP package. Use of the CM@Risk’s Contingency is described in Section 5.2.2.3.

“Contract Documents” The following items and documents executed by the City and the CM@Risk: (i) all written Change Orders; (ii) this Agreement, including all exhibits and attachments and (iii) GMP Plans and Specifications.

“Contract Price” The amount or amounts set forth in Article 5 and as modified by Change Order.

“Construction Fee” The CM@Risk’s administrative costs, home office overhead, and profit, whether at the CM@Risk’s principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions Costs.

“Contract Time” The Days as set forth in Article 4 for the period of time, including authorized adjustments, allotted in the Contract Documents for Final Acceptance of the Work.

“Cost of the Work” The direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities required to construct the Work, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk’s Construction Fee, General Conditions Costs, CM@Risk’s Contingency and taxes.

“Critical Path” The sequence of activities which control the overall duration of the project from the start of the Work to the Final Acceptance of the Project. Any delay in the completion of these activities will extend the Contract Time

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

“Design Phase Services Contract” An agreement between the City and CM@Risk for Services provided by the CM@Risk during the design phase.

“Design Professional” A qualified, licensed design professional who furnishes design and/or construction administration services for the Project.

“Differing Site Conditions” Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the project site.

“Final Acceptance” The completion of the Work including punch list, as prescribed in Section 4.1.

“Float” The number of Days by which an activity can be delayed without lengthening the Critical Path and extend the Contract Time.

“General Conditions Costs” Includes but is not limited to the following types of costs for the CM@Risk during the construction phase: (i) payroll costs for project manager or CM@Risk for Work conducted at the site, (ii) payroll costs for the superintendent. (iii) payroll costs for other management personnel resident and Working at the site, (iv) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (v) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vi) costs of liability insurance premiums not included in labor burdens for direct labor costs, (vii) costs of bond premiums or Contractor’s default insurance.

“Guaranteed Maximum Price” or “GMP” The sum of the maximum Cost of the Work; the CM@Risk’s Construction Fee; General Conditions Costs, taxes, bonds, insurance costs and CM@Risk’s Contingency.

“GMP Plans and Specifications” The set of plans and specifications provided in the Design Phase Services upon which the Guaranteed Maximum Price Proposal is based.

“Legal Requirements” All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site and relating to the performance of the Work.

“Notice to Proceed” or “NTP” A directive issued by the City, authorizing the CM@Risk to start the Work.

“Payment Request” The City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

“Product Data” Illustrations, standard 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 Record Documents” The documents created pursuant to Section 2.10.

“Samples” Physical examples, which illustrate materials, equipment or Workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” Drawings or reproductions of drawings, detailing; fabrication and erection of structural elements, false Work and forming for structures, fabrication of reinforcement steel, installed equipment and installation of systems, or any other supplementary plans or similar data, which the CM@Risk is required to submit for approval.

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

“Specifications” The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and Workmanship as applied to the Work and certain administrative details applicable thereto. Except as modified by the project plans, specifications and Change Orders, this Project shall be constructed using the current Uniform Standard Specifications and Details for Public Works Construction as furnished by the Maricopa Association of Governments and as amended by the City.

“Subcontractor” Those having direct contracts with the CM@Risk and those who furnish material worked into a special design according to the plans and specifications for the Work, but not those who merely furnish material not so worked.

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

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

Article 2 - CM@Risk’s Services and Responsibilities

2.1 Standard Specifications and Details

2.1.1 The City is now operating under the latest revision of the Uniform Standard Specifications and Details for Public Works Construction, published by the Maricopa Association of Governments, the City of El Mirage Infrastructure Guide, the City of El Mirage Details, and the City of Peoria Standard Details where such details are not adopted or included in MAG, and all are herewith incorporated by reference and made a part hereof.

2.1.2 Copies of the Uniform Standard Specifications and Uniform Standard Details, published by the Maricopa Associations of Governments, are available at the Maricopa Association of Governments office, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona; they may be downloaded at their web site: <http://www.mag.maricopa.gov/> under “Publications”.

2.2 General Services

CM@Risk’s Representative shall be available to the City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk’s Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of the CM@Risk. CM@Risk’s Representative may be replaced only with the written consent of the City.

2.3 Government Approvals and Permits

2.3.1 The CM@Risk shall obtain all necessary permits for the Work, and pay all applicable fees. The CM@Risk is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices.

2.3.2 Copies of these permits and notices must be provided to the City prior to starting the permitted activity

2.4 Pre-construction Conference

2.4.1 Prior to the commencement of any Work, the City will schedule a Pre-construction conference.

2.4.2 The purpose of this conference is to establish a Working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the Work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

2.4.3 The Notice to Proceed shall be issued in accordance with MAG Section 108.

2.4.4 The CM@Risk shall provide a schedule of values based on the categories used in the buyout of the Work. The schedule of values shall not be greater than the approved GMP and shall identify the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.4.5 Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

2.5 Control of the Work

2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

2.5.2 CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.5.3 CM@Risk or the CM@Risk's Superintendent shall be present at the Site at all times that Work under this contract is taking place.

2.5.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

2.5.3.2 In the event of noncompliance of this section, the City may require the CM@Risk to stop or suspend the Work in whole or in part.

2.5.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.

2.5.5 Before ordering materials or doing Work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings.

2.5.6 The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the City at once.

2.5.7 The CM@Risk shall establish and maintain all construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona, in accordance with section 2.7

2.5.8 CM@Risk shall be responsible for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.5.9 CM@Risk shall coordinate the activities of all Subcontractors. If the City performs other Work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5.10 The respective sections of the specifications contain detailed requirements for materials testing and inspections to be performed by an approved testing laboratory. All costs incurred for testing laboratory services will be paid by the CM@Risk at no cost to the City.

2.6 Control of the Work Site

2.6.1 Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

2.6.2 CM@Risk shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.

2.6.3 CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all Work to minimize disruption to residents and the public.

2.6.4 Only materials and equipment used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@Risk.

2.7 Construction Survey

2.7.1 General: The CM@Risk shall furnish the services of a surveyor professionally licensed or Registered (RLS) to perform land surveying in the State of Arizona. At the pre-construction conference, the CM@Risk shall provide to the City in writing the name and license number of the person who will perform the survey Work. The City or their designated representative will initially provide the alignment control points and the control elevation benchmark(s). All other Master Control surveying in connection with this contract shall be the responsibility of the CM@Risk to provided surveying services. At a minimum these services shall include preconstruction surveys, construction surveys and a post-construction survey and their accuracy shall be third order or better. Payment for these services shall be included in the GMP.

2.7.2 Preconstruction Surveys: Preconstruction surveys include, but are not limited to:

2.7.2.1 Valve and Manhole Ties: Prior to the start of construction, the CM@Risk will reference survey monuments to a permanent feature. A copy of all reference ties shall be provided to the City Inspector and to the CM@Risk. The City will provide to the CM@Risk as-built records showing these locations and ties to existing valves.

2.7.2.2 Topographic Survey: The CM@Risk shall perform topographic surveys necessary to ascertain unforeseen conditions as requested by the City.

2.7.2.3 Elevations: When it is a requirement of the contract for the CM@Risk to pothole existing utilities to verify their location and elevation, the CM@Risk shall ascertain stationing and elevations of the existing utilities and compute slopes and distances to insure potential conflicts are identified. The CM@Risk shall provide this data to the City sufficiently in advance of construction so that remedial action can be taken.

2.7.3 Construction Surveys: During construction the CM@Risk shall provide survey services including, but not limited to:

2.7.3.1 Staking: The CM@Risk shall provide all construction staking, including right-of-way and easements, slope staking, line and grade, and other staking, from which measurement of items of Work can be taken conveniently by the construction force and which will insure the project is constructed according to the plans.

2.7.3.2 Quantity Surveys: Quantity surveys, for identified unit price items, shall be conducted, and the data derived from these surveys shall be used in computing the quantities of Work performed and the actual construction completed and in place.

2.7.3.3 The CM@Risk shall conduct the original and final surveys and surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All these surveys shall be conducted under the direction of a representative of the City, unless the City waives this requirement in a specific instance. The CM@Risk shall make the computations based on the surveys for any periods for which progress payments are requested.

2.7.3.4 Promptly upon completing a survey, the CM@Risk shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the Work to the City, who shall use them as necessary to determine the amount of progress payments. The CM@Risk shall retain copies of all such material furnished to the City.

2.7.4 Post-Construction Surveys: Upon completion of construction and prior to submittal of record drawings, the CM@Risk shall conduct the necessary surveys to verify final alignment and grade, location and elevation of underground utility stub outs, and permanent ties for all valves, fire hydrants, flushing lines, corporation stops, and other features as directed by the City. Promptly upon completing the survey the CM@Risk shall furnish the original of all field notes and records relating to the post-construction surveys to City. A copy of the field notes and records shall be retained by the CM@Risk for use in preparation of the record drawings.

2.7.5 Datum: Unless otherwise specified, all surveys shall be conducted using the NAVD 88 datum.

2.7.6 Quality Assurance: From time to time, the City or the City's Representative may cause a quality assurance survey to be performed. Such survey may include, but not be limited to:

- Review of records, methods, procedures and techniques.
- Verification of computations.
- Resurveying using in-place hubs, stakes or monuments.

2.7.7 Defective Work: The City will notify the CM@Risk of any non-compliance with the foregoing provisions of this section and the actions to be taken. The CM@Risk shall, after receipt of such notice, immediately take corrective action. If the CM@Risk fails or refuses to comply promptly, the City may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders, nor any Work performed which must be removed and replaced as a result of defective survey Work, shall be made the subject of a claim for extension of time or for excess costs or damages by the CM@Risk. If recurring deficiencies indicate the registered land surveyor is not competent to perform the required surveys, corrective action shall be taken as directed and progress payments may be withheld until such corrective action has been completed.

2.7.8 Certification: Upon completion of all survey Work on this contract, the RLS shall submit a letter to the City, on letterhead stationery, containing the following paragraph:

"I hereby certify that all elevations, dimensions, measurements, tabulations and computations provided by me on this contract are true, correct and accurate to the best of my knowledge and belief."

(Typed Name)
Registered Land Surveyor

This letter shall be signed by the RLS and cite the City project name and number and shall be stamped with the RLS's professional stamp.

2.8 Quality Control, Testing and Inspection

2.8.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.8.2 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.8.3 The CM@Risk shall be responsible for all Quality Control and Acceptance Testing.

2.8.4. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.8.5 The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide them access to the Work at all times.

2.8.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.8.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of the CM@Risk to coordinate and to comply, unless otherwise provided in the Contract Documents.

2.8.8. Failure of the City or City's selected testing agency to discover or detect noncompliance by CM@Risk with the Contract Documents shall not relieve the obligation of CM@Risk to comply with the Contract Documents and to correct any defective work or work not in compliance with the Contract Documents, at CM@Risk's sole cost and expense.

2.9 Trade Names and Substitutions

2.9.1 Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

2.9.2 The substitution shall be submitted by CM@Risk in writing to the City.

2.9.3 The CM@Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.9.4 The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

2.9.5 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

2.9.6 The CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.9.7 The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected.

2.9.8 If the City does not respond in a timely manner, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.10 Project Record Documents

2.10.1 During the construction period, the CM@Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

2.10.1.1 The CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the Drawings
- Revisions to details shown on Drawings
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits
- Actual equipment locations
- Changes made by Change Order
- Details not on original Contract Drawings

2.10.1.2 The CM@Risk shall mark completely and accurately Project Record Drawing sets of Construction Documents.

2.10.1.3 The CM@Risk shall mark Project Record Drawings sets with red erasable colored pencil.

2.10.1.4 The CM@Risk shall note request for information (RFI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

2.10.1.5 The CM@Risk shall submit Project Record Drawing sets and Shop Drawings to the City or its representative for review and comment.

2.10.2 Upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to the City prior to Final Acceptance and as a condition of Final Acceptance.

2.10.3 The City Representative will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

2.11 Project Safety

2.11.1 These Construction Documents, and construction covered by this agreement are to be governed, at all times, by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:

- a. Williams-Steiger Occupational Safety & Health Act of 1970, Public Law, 91-596.
- b. Part 1910 and Part 1926 - Occupational Safety and Health Standards, Chapter

XVII of Title 29, Code of Federal Regulations.

- c. Part 1518 - Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

2.11.2 The CM@Risk is responsible for safety of the job site for employees of CM@Risk as well as for members of the general public and others who may drive or walk through or be in the job site.

2.11.3 CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether Working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.11.4 CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.11.5 The CM@Risk shall provide a "competent person" as required by O.S.H.A. regulations. The "competent person" shall be identified at the preconstruction conference with the City advised in writing of any changes.

2.11.6 The "competent person" shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

2.11.7 CM@Risk and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable legal and regulatory requirement.

2.11.8 CM@Risk will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.11.9 CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.11.10 Nothing in this agreement shall relieve the CM@Risk of his responsibility to maintain traffic, structures, etc., as noted on the plans, specifications, and Special Provisions. The CM@Risk is responsible to provide all necessary shoring, bracing and trench support as is necessary to maintain traffic structures, etc., as stipulated in the plans, specifications, and Special Provisions. If the stability of adjoining building, walls, roadways, etc., is endangered by the CM@Risk's excavation, shoring, bracing, or underpinning shall be provided as necessary to ensure project safety. Cost for shoring, bracing, underpinning, and trench support shall be included in the appropriate items listed in the GMP, and no additional payment shall be made for this Work.

2.12 Warranty

2.12.1 CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in

the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and Workmanship.

2.12.2 The date of Final Acceptance and the beginning of the Warranty period shall be the date upon which the City indicates final completion and acceptance of the Work, irrespective of early completion by some subcontractors of their Work. Final Acceptance will not be issued until all items of Work, including punch list items have been completed. The CM@Risk shall furnish extended warranties for facilities placed in service before Final Acceptance and that expire no earlier than one year beyond Final Acceptance except as otherwise required in the specifications.

2.12.3 CM@Risk's warranty obligation shall be in accordance with MAG Specifications.

2.12.4 Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties prior to Final Acceptance.

2.13 Correction of Defective Work

2.13.1 CM@Risk agrees to correct any Work that is not in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one year from the date of Final Acceptance of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.13.2 CM@Risk shall take immediate steps to commence correction of nonconforming Work, subject to Section 2.12 above, within fourteen calendar days of receipt of written notice from City in accordance with MAG Specifications. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by the City to be an emergency, the City shall notify the CM@Risk, via the most expeditious means regarding the nature and condition of the defects. In turn, the CM@Risk shall immediately dispatch necessary forces to correct the defect or the emergency condition in accordance with MAG Specifications.

2.13.3 The one year period referenced in Division 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that the City may have regarding CM@Risk's other obligations under the Contract Documents.

2.13.4 The failure of City to discover or detect noncompliance by CM@Risk with the Contract Documents shall not relieve the obligation of CM@Risk to comply with the Contract Documents and to correct any defective work or work not in compliance with the Contract Documents, at CM@Risk's sole cost and expense. The City's approval of the Project, or any part thereof, shall not constitute a waiver of the City's right to require the CM@Risk to correct any Work subsequently found or determined not to be in compliance with the Contract Documents.

2.14 Contractor Labor Requirements

The CM@Risk shall insure that all employees have a legal right to live and Work in the United States. Upon request by the City of El Mirage, a copy of the Birth Certificate, Certificate of Naturalization, Immigration Card, or Special Entry Permit shall be provided to the City Engineer. In addition, employee compensation shall meet all applicable

requirements of the Fair Labor Standards Act (FLSA) and Federal Minimum Wage Laws.

2.15 CM@Risk Self Perform

(Applies to Horizontal Projects only) CM@Risk shall perform, with the CM@Risk's own organization, construction Work that amounts to not less than forty-five percent of the total contract price for construction. For the purposes of this paragraph, the total contract price for construction does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

Article 3 - City's Services and Responsibilities

3.1 City's Representative and Inspector

3.1.1 City's Representative is responsible for providing City-supplied information and approvals in a timely manner to assist CM@Risk to fulfill its obligations under the Contract Documents.

3.1.2 City's Representative will also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.1.3 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a regulatory agency.

3.1.3.1 The inspector is authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.1.3.2 The inspector is not authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CM@Risk.

3.1.3.3 The inspector shall have the authority to reject Work or materials until any questions at issue can be decided by the City's Representative.

3.1.3.4 The furnishing of an inspector by the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the Work in accordance with Contract Documents.

3.2 Design Professional Services

The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have the right to limit or restrict or reject any contract modifications that are mutually acceptable to the City and Design Professional.

3.3 City's Separate Contractors

City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.

3.4 Permit Review and Inspections

3.4.1 If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

3.4.2 The regulating agencies of the City, such as Public Works, Fire, and Planning Departments, enforce Legal Requirements. The enforcement activities of the City are independent and separate from this Agreement.

Article 4 - Contract Time

4.1 Contract Time

4.1.1 Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance.

4.1.2 Contract Time for the Agreement shall be three hundred (300) consecutive calendar days starting with the Notice to Proceed. Contract Time shall be for the completion of the Work.

4.1.3 CM@Risk agrees that it will commence performance of the Work and achieve the Contract Time.

4.1.4 All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

4.2 Final Acceptance

Upon receipt of written notice that the Work is ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued until all items of Work, including punch list items, have been completed to the City's satisfaction.

4.3 Liquidated Damages

4.3.1 For this project, time is of the essence. Therefore, there will be liquidated damage assessment made for each calendar day the project is not completed after the specified completion date. For each and every calendar day that Work shall remain incomplete after the time specified for the completion of the Work in the GMP, or as adjusted by the City, the sum per MAG Section 108.9, per calendar day, shall be deducted from monies due to the CM@Risk, not as a forfeit or penalty, but as liquidated damages and added expenses including administrative, inspectors' cost and loss of facility revenue. This sum is fixed and agreed upon between the parties, because the actual loss to the City caused by delay in completion will be impractical and extremely difficult to ascertain and determine.

4.3.2 Final Acceptance means the completion of all items of Work, including punch list items subject to Section 4.2.

4.3.3 Permitting the CM@Risk to continue and finish the Work or any part of it after

the time fixed for its completion, or after the date to which the time fixed for its completion may have been extended, does not operate as a waiver by the City of any rights under this contract.

4.3.4 The CM@Risk acknowledges and agrees to the amount of liquidated damages, specified in Section 4.3.1.

4.4 Project Schedule

4.4.1 The Project Schedule approved as part of a GMP shall be updated and maintained throughout the contract period.

4.4.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents.

4.4.3 An updated Project Schedule shall be submitted monthly to the City as part of the Payment Request. The monthly submittal shall include one full size plot of the entire schedule and one computer disk containing the schedule in a format acceptable to the City.

4.4.4 CM@Risk shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work as presented in the GMP and within the Contract Time.

4.4.5 With each Project Schedule submittal, the CM@Risk shall include a transmittal letter including the following:

- Description of problem tasks, referenced to field instructions or requests for information (RFI's), as appropriate
- Current and anticipated delays including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay
 - Known or potential impacts and their delay on other activities, milestones, and their impact date of Final Completion
 - Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Time Extension requests
 - Other items
- Final Completion date status:
 - If ahead of schedule, the number of calendar days ahead
 - If behind schedule, the number of calendar days behind
- Other Project or scheduling concerns.

4.4.6 City's review of and response to the Project Schedule serves to ensure for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and

exclusive control over the means, methods, sequences and techniques for executing the Work.

4.4.7 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

4.4.8 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

4.4.9 The CPM diagram schedule shall indicate all relationships between activities.

4.4.10 The activities making up the schedule shall contain sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Individual activities shall not exceed 30 days in length.

4.4.11 The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.

4.4.12 The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

4.4.13 The project schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished material and construction by other contractors when those activities are interrelated with the CM@Risk activities.

4.4.14 The Project Schedule shall consider the City's and the tenants' use of portions of the Project during Contract Time and prior to Final Acceptance.

4.4.15 Float time shall be as prescribed below:

4.4.15.1 The total Float time within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

4.4.15.2 The CM@Risk shall not sequester shared Float time through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

4.4.15.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded and the Contract Time is also exceeded.

Article 5 - Contract Price

5.1 General

The CM@Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved Guaranteed Maximum Price.

5.2 Contract Price

5.2.1 The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit "C" an amount of **\$6,600,000.00**.

5.2.2 Guaranteed Maximum Price is composed of the following not-to-exceed lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs.

5.2.2.1 The Cost of the Work is **\$6,600,000.00**. The Guaranteed Maximum Price shall be based on the GMP Plans and Specifications. The GMP Plans and Specifications shall consist of the City Hall (EM15-F01) Construction Documents prepared by Architekton dated 1/12/2016, and the CM@Risk GMP proposed by Haydon Building Corp dated 2/10/2016.

5.2.2.2 The general conditions costs and the construction fee are firm fixed lump sums.

5.2.2.3 CM@Risk's Contingency is a fund to cover cost growth during the project used at the sole discretion of the City usually from costs that result from project circumstances.

5.2.2.3.1 At the time that CM@Risk's Contingency is used by the CM@Risk, the appropriate markups for overhead and profit will be applied.

5.2.2.3.2 When the CM@Risk utilize CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, a revised schedule of values shall be submitted to document this.

5.2.2.3.3 Any portion of the CM@Risk's Contingency not utilized after Final Acceptance of the project shall be retained by the City.

5.2.2.4 Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a firm fixed lump sum.

5.2.3 Owner's Contingency funds are to be used at the sole discretion of the City. Owner's Contingency will be added to the Contract Price for approval by Council to cover any increases in Project costs that result from City directed changes or unforeseen site conditions. At the time that Owner's Contingency is used, the appropriate markups per section 12 will be applied.

5.2.4 The GMP is subject to adjustments made in accordance with Article 6 and by Change Orders to this Agreement.

5.2.4.1 GMP Change Orders are cumulative except for contingency.

5.2.4.2 If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in Article 6.6.

Article 6 - Changes to the Contract Price and Time

6.1 Delays to the Work

Delays and damages shall be determined in accordance with MAG Standard Specifications Section 109.8.

6.2 Differing Site Conditions

Differing Site Conditions shall be addressed in accordance with MAG Standard Specification section 104.2.

6.3 Errors, Discrepancies, and Omissions

6.3.1 If the CM@Risk observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.

6.3.2 If the CM@Risk proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

6.4 City Requested Change in Work

6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

6.4.2 Such alterations and changes shall be addressed in accordance with MAG Standard Specifications section 104.2.

6.5 Change Orders

6.5.1 City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Order. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.5.2 All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents.

6.6 Extra Work

6.6.1 The CM@Risk shall perform such extra Work and charge the Owner at actual cost of labor and materials. The CM@Risk shall have the right to add not more than 5% to the Subcontractor's prices for authorized extra Work performed solely by Subcontractors. Such %age shall include all of the CM@Risk's charges for overhead, profit, administration and supervision. A 15% mark-up for overhead, profit, administration and supervision may be added to the CM@Risk's cost of labor and materials for extra Work authorized to be

done by his own forces. The Subcontractor's maximum allowable additions for overhead, profit, administration and supervision shall not exceed 15% of cost of labor and materials. The CM@Risk and Subcontractors will not be allowed any additional compensation beyond the allowable markups for overhead, profit, administration and supervision as noted above.

6.6.2 For Work omitted from Contract: If Contract Agreement has been previously increased by Change Order for additional Work, then overhead and profit will be deducted for omitted Work; if revised Contract Price will be less than original Contract amount, then overhead expenses and profit will not be deducted as part of the deductive Change Order for Work omitted.

6.6.3 Where extra Work involves both added and omitted Work, the overhead, profit, administration and supervision figures specified above shall be added only to the increased amount over the original Contract Price.

6.7 Contract Modifications

Any agreement which modifies the terms of the contract (including Change Orders) shall be approved in writing by the Public Works Director. Once properly executed by both parties, these modifications to the contract shall have the same effect as if they had been included in the original contract. Signature by the contracting parties shall constitute full accord and satisfaction between the City and the CM@Risk for all costs, damages, and expenses of whatever kind or nature, including delay, impact or acceleration damages, which may be occasioned by the modification.

6.8 Emergencies

In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency Work under this Division shall be determined as provided in this Article.

Article 7- Procedure for Payment

7.1 Payment

Payment for the specific Work under this Agreement will be made in accordance MAG Standard Specification section 109.

7.2 Record Keeping and Finance Control

7.2.1 As it relates to Contract "Allowances" or cost based change orders, records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis. The City, its authorized representative, and/or the appropriate agency, reserve the right to audit the CM@Risk's records, as it relates to Allowances or cost based change orders, in compliance with local, state or federal policies, statutes or at the City's discretion, within (3) years of Final Acceptance of the Work.

7.2.2 The CM@Risk shall include a provision similar to paragraph 7.2.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers, who have reimbursable GMP type contracts, providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate agency, has access to the Subconsultants', Subcontractors', and Suppliers' records.

Article 8 - Claims and Disputes

8.1 Attorney Fees

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to received from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

As an alternative to filing a law suit to resolve the dispute, the parties may elect to arbitrate the dispute. Each party shall select a competent and impartial arbitrator. The two selected arbitrators shall appoint a third arbitrator. If the two appointed arbitrators cannot agree on a third, they may petition a judge having competent jurisdiction to select the third arbitrator, or they may resign their appointment jointly or individually so that the parties may renew the selection process. The written award of two of the three arbitrators shall bind the parties. The cost of the arbitrators and any expert witnesses shall be borne by the party that hired them. The cost of the third arbitrator and other expenses of the arbitration shall be shared equally by the parties. The arbitration shall take place in the City of El Mirage. State court rules of procedure and evidence shall be governing.

8.2 Duty to Continue Performance

Unless provided to the contrary in the Contract Documents, 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 Representatives of the Parties

8.3.1 City's Representatives

8.3.1.1 City designates the individual listed below or his designee as its Senior Representative (Level III), which individual has the authority and responsibility for avoiding and resolving disputes under MAG Section 110:

Jorge Gastelum, Director of Development and Community Services/City Engineer
12145 NW Grand Avenue
El Mirage, Arizona 85335

8.3.1.2 City designates the individual listed below as its City's Representative (Level II), which individual has the authority and responsibility set forth in MAG Section 110:

Chris Hauser, Project Manager
12145 NW Grand Avenue
El Mirage, Arizona 85335

8.3.1.3 City designates the individual listed below as its City's Representative (Level I), which individual has the authority and responsibility set forth in MAG Section 110:

Chris Hauser, Project Manager
12145 NW Grand Avenue
El Mirage, Arizona 85335

8.3.2 CM@Risk's Representatives

8.3.2.1 CM@Risk designates the individual listed below as its Senior Representative (Level III), which individual has the authority and responsibility for avoiding and resolving disputes under MAG Section 110:

Les Keeble, Vice President
Haydon Building Corp
4060 E. Cotton Gin Loop
Phoenix, AZ 85040

8.3.2.2 CM@Risk designates the individual listed below as its CM@Risk's Representative (Level II), which individual has the authority and responsibility for avoiding and resolving disputes under MAG Section 110:

Jeremiah Hernandez
Haydon Building Corp
4060 E. Cotton Gin Loop
Phoenix, AZ 85040

8.3.2.3 CM@Risk designates the individual listed below as its CM@Risk's Representative (Level I), which individual has the authority and responsibility for avoiding and resolving disputes under MAG Section 110:

Jeremiah Hernandez
Haydon Building Corp
4060 E. Cotton Gin Loop
Phoenix, AZ 85040

Article 9 - Suspension and Termination

9.1 The City may suspend or terminate this contract in accordance with MAG Specifications Section 105 and 108.

Article 10 - Insurance and Bonds

10.1 Insurance Requirements

10.1.1 The CM@Risk, at CM@Risk's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies possessing a current A.M. Best, Inc. rating of A- or better, and duly licensed or approved to do business in the State of Arizona, with policies and forms satisfactory to the City.

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

The CM@Risk's insurance shall be primary insurance, and any insurance or self insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's Work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The CM@Risk shall be solely responsible for deductible and/or self-insured retention and the City, at its option, may require the CM@Risk to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, with 10 Working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The 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 Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of CM@Risk's obligations under this Contract.

The insurance policies, except Workers' Compensation, required by this Contract shall name the City, its agents, representatives, officers, directors, officials, and employees as Additional Insureds.

10.1.2 General Liability

CM@Risk shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG000211093 or any replacement thereof. The coverage shall not include X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision, commutation clause or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for CM@Risk's operations and products and completed operations.

Any CM@Risk subcontracting any part of the Work, services, or operations awarded to the CM@Risk, shall purchase and maintain, at all times during prosecution of the Work, services, or operations under this Contract, an Owner's and CM@Risk's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Work or CM@Risk's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the CM@Risk's Commercial General Liability insurance.

The Commercial General Liability insurance and the Owner's and Construction Manager at Risk Protective Liability insurance policies shall not be written on a "claims made" basis.

10.1.3 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 the CM@Risk's any owned, hired, and non-owned vehicles assigned to or used in performance of the CM@Risk's Work. Coverage will 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, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply. The Commercial/Business Automobile Liability insurance policy shall not be written on a "claims made" basis.

10.1.4 Workers' Compensation

The CM@Risk shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CM@Risk's employees engaged in the performance of the Work; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any Work is subcontracted, the CM@Risk will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the CM@Risk.

10.1.5 Certificates of Insurance

Prior to commencing services under this Contract, CM@Risk shall furnish the City with Certificates of Insurance (naming the City as Additional Insured), or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance required by this Contract shall be identified with a bid serial number and title. A \$25.00 administrative fee shall be assessed for all Certificates received without the appropriate bid serial number and title.

10.1.6 Cancellation and Expiration Notice

Insurance required herein shall not expire, be canceled or materially changed without fifteen (15) days prior written notice to the City.

10.2 Bonds and Other Performance Security

10.2.1 Bid/Proposal Security

Non-revocable bid/proposal security payable to the City of El Mirage in the amount of 10% of the total bid/proposal price is required. This security shall be in the form of a bid bond, certified check, or cashier's check and must accompany the Proposal submitted by the CM@Risk. If the security is submitted in the form of a bid bond, the Bid Bond Form included in the Bid Documents shall be used. A Proposal submitted without the required bid/proposal security will be declared non-responsive, will not be given further consideration and will be returned to the Proposer.

The City will hold all bid security during the evaluation process. As soon as is practicable after the completion of evaluation, the City will:

- a. Issue a Contract award notice for those offers accepted by the City;
- b. Return all bid/proposal security to those who have not been issued a Contract award notice.

All bid/proposal security from the Proposer(s) who has been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc.). If the CM@Risk fails to execute the required contractual documents and bonds within the time specified, or ten (10) days after notice of award if no period is specified, the CM@Risk may be found to be in default under the bid/proposal security. In case of default, the City reserves all rights inclusive of, but not limited to, the right to enter into a contract with an alternative Proposer for the Work and to recover any actual excess costs from the Proposer. Collection against the bid/proposal security shall be one of the, but not the sole, measures available toward the recovery of any excess costs.

All bid/proposal bonds shall be executed on the Bid Bond Form included in the Bid Documents, duly executed by the Bidder/Proposer as Principal and having as surety thereon a surety company approved by the Owner and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All insurers and sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating of "A-" or better as currently listed in the most recent A.M. Best Key Guide published by the A.M. Best Company, payable without condition to the Owner.

10.2.2 Performance Bond

The CM@Risk shall be required to furnish non-revocable security binding the CM@Risk to the City to provide faithful performance of the Contract in the amount of 100% of the total Contract price payable to the City of El Mirage.

Performance security shall be in the form of a performance bond, certified check, or cashier's check. This security must be in the possession of the City of El Mirage Finance Department within the time specified, or ten (10) days after notice of award if no period is specified. If the CM@Risk fails to execute security document as required, the CM@Risk may be found in default under the terms of the Bid Security. In case of default the City reserves all rights under the Bid/Proposal security pursuant to Sec. 10.2.1.

All performance bonds shall be executed on the Performance Bond Form included in the Bid Documents, duly executed by the Bidder as Principal and having as surety thereon a surety company approved by the Owner and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All insurers and sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide published by the A.M. Best Company, payable without condition to the Owner.

10.2.3 Payment Bond

The CM@Risk shall be required to furnish non-revocable security in an amount equal to the full Contract Price, made payable to the Owner and solely for the protection of those supplying labor or materials to the CM@Risk or its Subcontractors in the prosecution of the Work or any part thereof in accordance with A.R.S. § 34-222 and § 34-223.

All payment bonds shall be executed on the Payment Bond Form included in the Bid Documents, duly executed by the CM@Risk as Principal and having as surety thereon a surety company approved by the Owner and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All insurers and sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide published by the A.M. Best Company, payable without condition to the Owner.

Article 11 - Indemnification

11.1 CM@Risk's General

11.1.1 To the fullest extent permitted by law, the CM@Risk shall defend, indemnify and hold harmless the City of El Mirage, its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work. CM@Risk's duty to defend, indemnify and hold harmless the City of El Mirage, its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, Workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death, or injury to, impairment or destruction of property including loss of use resulting there from, caused by any act or omission of the CM@Risk, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

11.1.2 In any and all claims against the indemnified parties by any employee of the CM@Risk, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the defense and indemnification obligation in this Article 11 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CM@Risk, or any subcontractor, or any supplier or other person under Workmen's compensation acts, disability benefit acts, or other employee acts.

11.1.3 The CM@Risk shall also defend, indemnify and hold harmless the City of El Mirage, the Design Professional, the Owner's representative, any jurisdiction or agency issuing permits for any Work involved in the project, and their consultants, and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the Work itself), attorney's fees and other costs, including costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of CM@Risk to faithfully perform the Work and all of the Work and all of the CM@Risk's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

11.1.4 In case any claim, action, suit or proceeding is brought against the City of El Mirage, or any indemnified party by reason of any act or condition requiring indemnification by the CM@Risk hereunder, the indemnified party(ies) receiving notice of said claim, action, suit or proceeding shall notify the CM@Risk promptly of the same, and the CM@Risk shall, at the CM@Risk's expense, compromise, resist or defend, as appropriate, such claim, action, suit or proceeding, or cause the same to be compromised, resisted or defended, by the insurer of the liability, by the CM@Risk, or by legal counsel retained by the insurer or CM@Risk. The indemnified party shall have the right to approve the legal counsel selected by the CM@Risk or the insurer of the liability, which approval shall not be unreasonably

withheld.

11.1.5 The defense, indemnification, hold harmless provisions and City's Liability Insurance set forth herein shall survive any termination of this Agreement.

11.1.6 The CM@Risk shall have no obligation to indemnify or defend under this Article 11 to the extent such claims, damages, losses and expenses are caused by the sole negligence of a party indemnified hereunder.

11.1.7. The CM@Risk's obligation to defend, indemnify and hold harmless the City of El Mirage, its agents, representatives, officers, directors, officials and employees (the "Indemnified Parties") under this Article 11 shall include the obligation to defend, indemnify and hold harmless the Indemnified Parties from and against any and all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the failure or alleged failure of any Indemnified Party to detect, discover (including allegations of negligent inspection) or prevent any acts or omissions of the CM@Risk, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, which are alleged to have directly or indirectly resulted in personal or bodily injury, sickness, disease, death, or injury to, impairment or destruction of property including loss of use resulting there from to the Claimant.

Article 12 – General Provisions

12.1 Contract Documents

12.1.1 The Contract Documents are intended to permit the parties to complete the Work 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.

12.1.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in accordance with MAG Section 102.2.

12.1.2.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.

12.1.3 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.

12.1.3.1 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.

12.1.3.2 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.

12.1.3.3 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 in the form of a Change Order.

12.2 Time is of the Essence

City and CM@Risk mutually agrees that time is of the essence with respect to the dates and times set forth in the Contract Documents. Adjustments to contract time shall be in accordance with Article 4.

12.3 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.

12.4 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.

12.5 Assignment

Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

12.6 Successorship

CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.7 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.

12.8 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.

12.9 Severability

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

12.10 Compliance with Federal Laws

12.10.1 CM@Risk understands and acknowledges its obligations under, and the

applicability to CM@Risk, of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance. The City's failure to verify the CM@Risk's compliance with such laws shall not relieve the CM@Risk's obligation to comply with all applicable state and federal laws.

12.10.2 The CM@Risk shall require a drug free Workplace for all employees working under the Contract. Specifically, all employees of the CM@Risk who are Working under a contract with the City shall be notified, in writing, by the CM@Risk that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the Workplace.

Failure to require a drug free workplace may result in termination of the Contract and possible debarment from bidding on future City projects.

12.10.3 The CM@Risk will not discriminate against any employee or applicant for employment because of religion, race, creed, color, sex, national origin or disability. The CM@Risk will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their religion, race, creed, color, sex, national origin or disability. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CM@Risk agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause and the nondiscrimination laws of the State of Arizona and the United States.

12.10.4 The CM@Risk, will, in all solicitations or advertisements for employees placed by or on behalf of the CM@Risk, state that all qualified applicants will receive consideration for employment without regard to religion, race, creed, color, sex, national origin or disability.

12.10.5 The CM@Risk will send to each labor union or representative of Workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or Workers' representative of the CM@Risk's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.10.6 The CM@Risk will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.10.7 The CM@Risk will furnish to the City all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

12.10.8 In the event of the CM@Risk's noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the CM@Risk may be declared ineligible for further Government contracts or Federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24,

1965, or by rules or order of the Secretary of Labor, or as otherwise provided by law.

12.10.9 The CM@Risk will include the provisions of paragraphs 12.10.4 through 12.10.9 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CM@Risk will take such action with respect to any subcontractor or purchase order as the Department of Health and Human Services may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided however, that in the event the CM@Risk becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department of Health and Human Services, the CM@Risk may request the United States to enter into such litigations to protect the interests of the United States.

12.11 Legal Requirements

12.11.1 CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

12.11.2 It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the City in writing, describing the apparent variance or deficiency.

12.12 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.

12.13 City's Right Of Cancellation

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

12.14 Survival

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

12.15 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 has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City 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.

12.16 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.

12.17 Notice

12.17.1 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 prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

Les Keeble, Vice President
Haydon Building Corp
4060 E. Cotton Gin Loop
Phoenix, AZ 85040

Copy to:

Jeremiah Hernandez
Haydon Building Corp
4060 E. Cotton Gin Loop
Phoenix, AZ 85040

to City:

Jorge Gastelum, Director of Development and
Community Services/City Engineer
City of El Mirage
12145 NW Grand Avenue
El Mirage, Arizona 85335

Copy to:

Chris Hauser, Project Manager
City of El Mirage
12145 NW Grand Avenue
El Mirage, Arizona 85335

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

12.18 Preference for Use of Off-Duty El Mirage Police Officers The CM@Risk shall provide off-duty El Mirage police officer(s), if available, to control traffic at signalized intersections when traffic is restricted or where Work is underway or as directed by the Engineer. The cost of the officer(s) shall be included in the GMP. In the event El Mirage police officers are not available, the CM@Risk may obtain Arizona Police Officer Standards and Training (POST) Certified Officers from other off-duty sources.

12.19 Hazardous Materials

12.19.1 Unless included in the Work, if the CM@Risk encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop Work and report the condition to the City.

12.19.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume Work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue Work in non-affected areas onsite.

12.19.3 An extension of Contract Time may be granted in accordance with Article 6.

12.20.4 The CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.20 Traffic Regulations

12.20.1 All traffic affected by this construction shall be regulated in accordance with the *City of Phoenix Traffic Barricade Manual* latest edition and the City of Phoenix in the Traffic Barricade Manual shall be referred to as the City of El Mirage City Engineer for interpretation.

12.20.2 At the time of the pre-construction conference, the CM@Risk shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring, and altering traffic control measure, as necessary. At the same time, the City will designate a representative who will be responsible for seeing that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents.

12.20.3 The following shall be considered major streets: all major parkway, mile (section line), arterial, and collector (mid-section line and quarter-section line) streets so classified by the City of El Mirage.

12.20.4 All traffic control devices required for this project shall be the responsibility of the CM@Risk. The CM@Risk shall place advance warnings **REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT** and **DO NOT PASS** signs in accordance with the Traffic Barricade Manual.

12.20.5 The CM@Risk shall provide, erect, and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals, and signs, and shall take all necessary precautions for the protection of the Work and safety of the public. The CM@Risk shall provide, erect, and maintain acceptable and adequate detour signs at all closures and along detour routes.

12.20.6 All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the CM@Risk shall conform to the standard design generally accepted for such purposes, and payment for all such services and materials shall be considered as included in the other pay items of the Contract.

12.20.7 The CM@Risk shall insure that all existing traffic signs are erect, clean, and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the

CM@Risk shall notify the Inspector at least forty-eight (48) hours in advance for City personnel to temporarily relocate said signs. The City Engineer will re-set all traffic and street name signs to permanent locations when notified by the Engineer that construction is complete, unless otherwise stated in the specifications. Payment for this item shall be made at the Contract lump sum price for TRAFFIC CONTROL.

12.20.8 When construction activities or traffic hazards at the construction site require the use of flagmen, it shall be the CM@Risk's responsibility to provide adequate personnel including flagmen to direct traffic safely.

12.20.9 Manual traffic control shall be in conformity with the Traffic Barricade Manual, except the liaison officer shall be contacted at the El Mirage Police Department at telephone number (623) 933-1341.

12.20.10 When traffic hazards at construction sites warrant the use of certified police personnel to direct traffic, arrangements should be made with the liaison officer at the El Mirage Police Department at telephone number (623) 933-1341.

12.20.11 The assembly and turn-arounds of the CM@Risk's equipment shall be accomplished using adjacent local streets when possible.

12.20.12 Equipment used and/or directed by the CM@Risk shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Provide a flagman or officer to assist with this operation.

12.20.13 During construction, it may be necessary to alter traffic control. Alterations shall be in accordance with the Traffic Barricade Manual.

12.20.14 No street within this project may be closed to through traffic or to local emergency traffic without prior written approval of the City Engineer of the City of El Mirage. Written approval may be given if sufficient time exists to allow for notification of the public at least two (2) days in advance of such closing. Partial closure of streets within the project shall be done in strict conformity with written directions to be obtained from the City Engineer.

12.20.15 Caution should be used when excavating near intersections with traffic signal underground cable. Notify the City Engineer twenty-four (24) hours in advance of any Work at such intersections. The CM@Risk shall install and maintain temporary overhead traffic signal cable as specified by the City Engineer when underground conduit is to be severed by excavations at intersections. The CM@Risk shall provide an off-duty uniformed police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City Engineer's satisfaction. Magnetic detector loops shall under no circumstances be spliced.

12.20.16 The CM@Risk shall address how local access to adjacent properties will be handled in accordance with the specification herein.

12.20.17 Where crossings of existing pavements occur, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow as determined by the City Engineer or his authorized representative. If plates cannot be used, crossings shall be back-filled or the CM@Risk shall provide a detour.

12.21 Construction Water

Watering shall conform to the provisions of Section 225 of the MAG Standard Specifications. The cost of watering will be included in the price bid for the construction operations to which such watering is incidental or appurtenant.

Installation and removal of fire hydrant meters should be scheduled at least forty-eight (48) hours in advance through the City of El Mirage Utilities Division at (623) 933-1228. The cost of the water is at the prevailing rate.

12.22 CM@Risk's Affidavit

CM@Risk shall submit a signed copy of the CM@Risk's Affidavit Regarding Settlement of Claims, attached as Exhibit "B", prior to final payment.

12.23 Equipment Rental Rates for Actual Cost Work

12.23.1 Compensation for equipment used on Actual Cost Work (M.A.G. U.S.S. 109.5.1) shall be paid in accordance with the Arizona Department of Transportation (A.D.O.T.) "Standard Specifications for Road and Bridge Construction," latest edition, Section 109.04(D)(3), except as follows:

The Rate Adjustment factors for year of manufacture shall be as published in the Dataquest Blue Book.

The Regional Adjustment Factor for climate and regional costs shall apply as published in the Blue Book.

Overtime and Shift rates shall be as follows:

- a. Overtime - at the rate of 1/176th of the monthly rate plus operating costs.
- b. Double Shift (16 hours per day) - the first 8-hour shift shall be at 1/176th of the monthly rate plus operating costs; the second 8-hour shift shall be at 50% of 1/176th of the monthly rate plus operating costs.
- c. Triple Shift (24 hours per day) - the first two shifts as b). above; the third shift shall be at 50% of 1/176th of the monthly rate plus operating costs.

12.23.2 Compensation under these procedures shall apply to CM@Risk/ Subcontractor-owned equipment only. Leased or rented equipment costs will be compensated as specified in A.D.O.T. 109.04(D)(3)(c).

12.24 NOT USED

12.25 Shop Drawings

12.25.1 The CM@Risk shall prepare and submit shop drawings which show details of all Work to insure proper installation of the Work using those materials and equipment specified under the approved plans and specifications.

12.25.2 A schedule of shop drawing submissions shall be submitted with the GMP. Unless otherwise noted, shop drawings will not be required for items specified or detailed in the Uniform Standard Specifications and details or the Technical Specifications.

Shop drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- a. All Working and erection dimensions.
- b. Arrangements and sectional views.
- c. Necessary details, including complete information for making connections between Work under this Contract and Work under other Contracts.
- d. Kinds of materials and finishes.
- e. Parts list and description thereof.

Each Drawing or page shall include:

1. Project name, City of El Mirage Project Number and descriptions.
2. Submittal date and space for revision dates.
3. Identification of equipment, product or material.
4. Name of CM@Risk and Subcontractor.
5. Name of supplier and manufacturer.
6. Relation to adjacent structure of material.
7. Physical dimensions, clearly identified.
8. Identification of and justification for deviations from the Contract Documents.
9. CM@Risk's stamp, initialed or signed, dated and certifying to review of submittal, certification of field measurements and compliance with Contract.
10. Location at which the equipment or materials are to be installed.

12.25.3 Location shall mean both physical location and location relative to other connected or attached material. The City will return unchecked any submittal which does not contain complete data on the Work and full information on related matters.

12.25.4 Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.

12.25.5 The CM@Risk shall schedule, prepare and submit all shop drawings in accordance with a time-table that will allow his suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the Work.

12.25.6 If the shop drawings show departures from the Contract requirements, the CM@Risk shall make specific mention thereof in his letter of transmittal, otherwise review of such submittals by the City shall not constitute review of the departure. Review of the drawings shall constitute review of the specific subject matter for which the drawings were submitted and not of any other structure, materials, equipment, or apparatus shown on the drawings.

12.25.7 The review of shop drawings will be general and shall not relieve the CM@Risk of responsibility for the accuracy of such drawings, nor for the proper fitting and construction

of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by shop drawings shall be initiated until such drawings have been reviewed and approved by the City.

12.25.8 The procedure in seeking review of the shop drawings shall be as follows:

- a. The CM@Risk shall submit six (6) complete sets of shop drawings and other descriptive data with one copy of a letter of transmittal for review by the City. The CM@Risk shall submit shop drawings to the Engineering Department for the City's review. Drawings submitted for review shall be folded to approximately 9" x 12".
- b. Drawings or descriptive data will be stamped "Approved", "Approved as Noted", or "Unacceptable - Resubmit" and one copy with a Letter of Transmittal will be mailed to the CM@Risk at an address designated by the CM@Risk.
- c. If a shop drawing or data is stamped "Approved" or "Approved as Noted", no additional submittal is required for that shop drawing.
- d. If a shop drawing or data is stamped "Unacceptable-Resubmit", the CM@Risk shall make the necessary corrections and resubmit the documents as required in Instruction 1. The letter transmitting corrected documents shall indicate that the documents are resubmittals.
- e. If any corrections, other than those noted by the City, are made on a shop drawing prior to resubmittal, such changes should be pointed out by the CM@Risk upon resubmittal.
- f. The CM@Risk shall revise and resubmit the shop drawing as required, until they are stamped either "Approved" or "Approved as Noted."
- g. After the CM@Risk's submittal or resubmittal of shop drawings, the City shall be provided with ten (10) working days for review.
- h. The City will not issue a "Notice to Proceed" until all shop drawings are approved, unless otherwise approved by the City Engineer.

12.25.9 The CM@Risk shall be responsible for all extra costs incurred by the City caused by the CM@Risk's failure to comply with the procedure outline above.

12.26 Date of Final Acceptance and Beginning of Warranty Period

12.26.1 The date of final acceptance and beginning of the warranty period shall be the date upon which the owner indicates completion and acceptance of the Work. This date will represent the completion date of the project, irrespective of early completion by some subcontractors of their Work.

12.26.2 No partial acceptance, no partial Certificate of Substantial Completion and no partial occupancy shall be approved by the City.

12.26.3 Final acceptance will not be issued until all items of Work, including punch list items, have been completed.

12.27 Payment for Stored Materials

12.27.1 The City will not pay for materials stored on site unless the material is properly stored, and the material has been paid for. The CM@Risk shall submit copies of invoices marked, "PAID", or other proof acceptable to the City indicating that the material, has in fact been paid for.

12.27.2 No payments will be made for any material stored offsite, whether it has been paid for or not.

12.28 The Clean Air Act

12.28.1 The CM@Risk shall comply with the Clean Air Act, as amended (42 USC 1857) and Executive Order 11288; and the Federal Water Pollution Control Act, as amended (33 USC 1251); and all applicable standards, orders and regulations issued pursuant thereto. The Owner agrees to report all violations thereof to the Environmental Protection Agency and specifically to comply with the following:

12.28.1.1 For the purpose of this paragraph, the term "facility" means (1) any building, installation, structure, location or site or operations, (2) owned, leased, or supervised (3) by the Owner or its CM@Risk and the latter's Subcontractors (4) for the construction, supply and service contracts entered into by the Owner for the purpose of accomplishing this project.

12.28.1.2 The Owner and CM@Risk agrees to comply with the Clean Air Act and the Federal Water Pollution Control Act during the accomplishment of this project and specifically agree to the following:

12.28.1.2.1 That any facility to be utilized in the accomplishment of this project is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.2;

12.28.1.2.2 That in the event a facility utilized in the accomplishment of this project becomes listed on the EPA List, the Government may, inter alia, cancel, terminate for default, or suspend for such failure, in whole or in part, the agreement;

12.28.1.2.3 That it will comply with all other requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, as amended, relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively and all regulations and guidelines issued there under;

12.28.1.2.4 That it will promptly notify the Government of the receipts of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this project is under consideration for listing on the EPA List of Violating Facilities;

12.28.1.2.5 That it will insert in any of its contracts and require insertion in subcontracts entered into for the purpose of accomplishing this project, unless otherwise exempted pursuant to the EPA regulations implementing the Clean Air Act and the Federal Water Pollution Control Act (40 CFR, Part 15.5e) provisions which shall include the criteria and requirements set forth in this paragraph, including this Subparagraph (5).

12.28.1.3 All pertinent rules and regulations issued under and pursuant to the National Environmental Policy Act of 1969 as amended (P.L. 90-190) (42 USC 4321); the National Historic Preservation Act of 1966 (80 Stat. 16 USC 470); the Wild and Scenic Rivers Act P.O. 90-542 as amended, and Executive Order No. 11593 of May 31, 1971.

12.29 Project Closeout

Prior to the final payment to the CM@Risk, the CM@Risk shall furnish to the City Project Representative for review the following written guarantees, warranties, manuals and equipment lists identified in the Contract Documents.

12.30 Cleaning

12.30.1 PART 1 - GENERAL

12.30.1.1 Work Specified Herein

12.30.1.2 This Section outlines requirements for cleaning of the Project Work. This Section is complementary to the General Conditions and Supplementary General Conditions and nothing herein shall be considered to waive any requirements of the General Conditions or Supplementary General Conditions.

12.30.1.3 Requirements of Regulatory Agencies

12.30.1.4 Safety and Insurance Standards: Maintain Project in accordance with the following safety and insurance standards:

State Industrial Commission (of Arizona), OSHA

12.30.1.5 Fire Protection

Store volatile waste in covered metal containers, and remove from premises daily. Pollution Control: Conduct clean-up and disposal operations to comply with local ordinances and anti-pollution laws. Burning or burying of rubbish and waste material on the project site is not permitted. Disposal of volatile fluid waste (such as mineral spirits, oil or paint thinner) in storm or sanitary sewer systems or into streams or waterways is not permitted.

12.30.2 PART 2 - PRODUCTS

12.30.2.1 Cleaning Material

12.30.2.2 Use only cleaning materials recommended by manufacturer of surface to be cleaned. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

12.30.3 PART 3 - EXECUTION

12.30.3.1 During Construction

- a. During the construction period, the material to be used in the Work shall be kept in an orderly manner, neatly stacked or piled.
- b. Clean up daily all refuse, rubbish scrap materials, and debris caused by operations, to the end that at all times the site of the Work shall present a neat, orderly and Workmanlike appearance. Sprinkle dusty debris with water.
- c. Provide for the disposal of all waste products, trash, debris, etc., and make necessary arrangement for legal disposal of same off the site. Lower waste materials in a controlled manner with as few handlings as possible.

- d. Remove all surplus material or any debris of every nature resulting from operations and put the site in a neat, orderly condition.
- e. Schedule cleaning operation so that dust and other contaminants resulting from cleaning process will not impact new Work.
- f. CM@Risk shall provide trash gondolas or containers for use by all trades.

12.30.3.2 Final Cleaning

- a. Use experienced workmen, or professional cleaners for final cleaning.
- b. Remove temporary Work.
- c. Clean all surfaces impacted by Construction.
- d. Protect new Work until final inspection and acceptance.
- e. All existing improvements within the right-of-way or private property which are disturbed, damaged, or destroyed by the Work under the Contract shall be restored to their original condition, or to the satisfaction of the City Representative.

12.31 Approved Applicators

Where specific instructions in these specifications require that a particular product and/or material(s) be installed and/or applied by an approved applicator of the manufacturer, it shall be the CM@Risk's responsibility to ensure that any Subcontractors used for such Work be approved applicators.

12.32 Watertight-Weathertight

Anything in the Contract Documents notwithstanding, the CM@Risk accepts the responsibility of constructing a watertight, weather tight project, except for design errors.

12.33 Progress Meeting

At a time designated by the City, a Weekly Progress Meeting will be held at the job site. The CM@Risk, together with representatives of his major Subcontractors, shall attend, as will the City. The CM@Risk shall be responsible for notifying the Subcontractors of their required attendance. The purpose of these meetings is to discuss the job progress, and to resolve any problems that may have developed since the last meeting. Unless followed up in writing, verbal authorizations or acknowledgments by anyone present shall not be binding.

12.34 Asbestos-Free Facility

12.34.1 The installation or use of any materials containing a detectable quantity of asbestos for this project is strictly prohibited. A detectable quantity of asbestos is defined as any detectable amount of asbestos using the method specified in Appendix E, subpart E of 40 CFR Part 763 Section 1, Polarized Light Microscopy.

12.34.2 The asbestos material prohibition shall supersede any material that might inadvertently be specified in the Project plans. The City or his representative shall be notified in writing 7 days prior to ordering any material that may contain detectable asbestos if the Approved Plans specify the use of such a material. The City or its representative shall

have the discretion to prohibit the use of any material containing detectable asbestos and shall approve or disapprove associated changes in costs. Should the CM@Risk install material containing detectable asbestos without notifying the City or his representative, the CM@Risk shall remove and replace such material with material not containing asbestos at no cost to the City.

12.35 After Hours Inspections

The CM@Risk is advised that inspections outside standard City inspection hours may be required. The CM@Risk shall coordinate his Work with the City Inspector. There shall be no additional payment for this coordination.

12.36 Arizona Pollutant Discharge Elimination System (AZPDES)

12.36.1 This project is subject to the Arizona Pollutant Discharge Elimination System (AZPDES) storm water requirements under the Arizona Department of Environmental Quality's (ADEQ) General Permit for Discharge from Construction Activities to Waters of the United States (Permit). Under provisions of the Permit, the CM@Risk shall be designated as the site operator who has day-to-day operational control of those activities at the project which are necessary to ensure compliance with the Storm Water Pollution Prevention Plan (SWPPP) or other Permit conditions. The CM@Risk shall be responsible for providing necessary materials and for taking appropriate measures to minimize pollutants in storm water runoff from the project.

12.36.2 The City is also identified as an operator for this project since the City has operational control over Project plans and specifications (including the ability to make modifications). However, it shall be the responsibility of the CM@Risk to select, implement and maintain Best Management Practices (BMP) (including sediment and erosion control measures) to prevent potential pollutants from entering storm water. The Project plans will specify the long term post construction storm water management measures, as required, that are to be used (i.e., retention basins, landscaping, etc.).

12.36.3 The CM@Risk shall be responsible for preparing the SWPPP for the Project. This Plan shall incorporate the post-construction storm water management measures prescribed by the City and meet all of the requirements described in the Permit (available by calling ADEQ at 602-771-4449 and through the internet at: www.adeq.state.az.us/environ/water/permits/stormwater.html).

12.36.4 The Flood Control District of Maricopa County has prepared a manual entitled "Drainage Design Manual for Maricopa County Arizona, Volume III, Erosion Control" to assist in the preparation of the SWPPP. It is available at the Flood Control District Office at 2801 West Durango Street, Phoenix, Arizona. The EPA has published a similar guide entitled *Storm Water Management for Construction Activities (EPA 832-R-92-005)*. It is available from the National Center for Environmental Publications Information at 1-800-490-9198.

12.36.5 The SWPPP shall be submitted to the City for approval at least 14 calendar days prior to issuance of the notice to proceed. The SWPPP will be reviewed by the City only to ensure that it includes the information required by the Permit. Development and compliance with other components of the SWPPP are solely the CM@Risk's responsibility. The City's approval of the SWPPP applies only to its contents and is neither comprehensive nor does it make the City responsible for the CM@Risk's noncompliance. The CM@Risk shall complete, certify and submit the Notice of Intent to the ADEQ with a copy to the City. In addition, the CM@Risk shall submit a written certification to Engineering Construction that the Notice of Intent has been sent to the ADEQ. This certification shall be received no later than three (3) working days prior to the Notice to Proceed. The ADEQ address is:

Surface Water Permits Unit (M05415B-3)
ADEQ - Water Permits Section
1110 W. Washington Street
Phoenix, AZ 85007

12.36.5.1 "AZPDES Permit Compliance" shall include all material, labor, and other incidental costs related to: (1) Preparing, updating, and changing the SWPPP; (2) installation and maintenance of all structural and non-structural BMPs either identified in the SWPPP or specified by the City in the Bid Document; (3) all clean-up and disposal costs associated with clean-up and repair following storm events and other runoff or releases on the Project; (4) implementation and maintenance of other activities identified in the SWPPP (i.e., inspections, record keeping); (5) preparation of the Notice of Intent and Notice of Termination. No additional payments will be made for these items.

12.36.5.2 It is the CM@Risk's responsibility to perform inspections of all storm water pollution control devices on the project in accordance with Permit requirements. The CM@Risk is also responsible for maintaining those devices in proper working order, including cleaning and/or repair. No separate payment will be made for such inspections, cleaning or repair. The Maricopa County Flood Control District provides access to real time rainfall information via telephone at (602) 506-8701 and the internet at <http://156.42.96.70/alert/alert.htm>.

12.36.6 All SWPPP reports required under this contract shall be made available to the public in accordance with the requirements of Section 308 (b) of the Clean Water Act. The storm water regulations require that the records be maintained at the construction site or that notice be provided indicating where the records are kept.

12.36.7 No condition of the AZPDES Permit shall release the CM@Risk from any responsibilities or requirements under other environmental statutes or regulations.

12.36.8 Within 30 calendar days after completion of all Work (including final stabilization when applicable), the CM@Risk shall submit a completed and signed NOT Form to the ADEQ with a copy to the City, thereby terminating all AZPDES Permit coverage for the project.

12.37 Temporary Utilities For Construction

12.37.1 "Temporary utility service" shall be defined as any utility service or usage by the CM@Risk prior to final acceptance of the Project by the City. For convenience, temporary utility services are classified as either "Type 1" or "Type 2". A "Type 1" service is a utility service established by the CM@Risk for his use during construction, which will not become part of the permanent utility service lines for the facility. A "Type 2" service is a utility service line and/or meter, which will become part of the utility service lines for the facility. Any use of a Type 2 service or meter by the CM@Risk prior to final acceptance of the facility by the City is included in the definition of "temporary utility service". The CM@Risk shall be required to install and maintain both Type 1 and Type 2 temporary utility services as necessary for execution of the Work under this contract.

12.37.2 In the case of Type 1 services, it shall be the CM@Risk's sole responsibility to make all arrangements as necessary for electric, telephone, gas, cable, water, and other utility services, as necessary for execution of the Project Work. The CM@Risk's responsibility shall include the setting of temporary power and telephone poles, the temporary extension of utility lines, and installation of meters. The CM@Risk shall pay all deposits, installation fees, service charges, usage charges, monthly flat rates, and all other

expenses associated with such service for the duration thereof.

12.37.3 For Type 2 services, the CM@Risk shall install the service lines and meters for the facility as required by the Project plans and specifications. For Type 2 services, the CM@Risk will be required to open an account with the utility company (or companies, if applicable) in the CM@Risk's name and maintain the account in the CM@Risk's name until final acceptance of the facility by the City. The CM@Risk shall pay all deposits, installation fees, service charges, usage charges, monthly flat rates, and all other expenses associated with the service through final acceptance of the facility by the City, including utility usage for final testing and startup. Upon final acceptance of the facility by the City, the utility service accounts and meters for the facility will be transferred to the City. The CM@Risk shall pay to the utility companies all amounts incurred prior to the transfer, including any transfer charges.

12.37.4 The CM@Risk shall estimate the charges associated with establishing and maintaining Type 1 and Type 2 temporary utility services at the site throughout the duration of the project, including the monthly flat charges and estimated usage charges. The CM@Risk shall include the costs associated with temporary utility services in appropriate item(s) within the GMP.

12.38 Maricopa County Air Quality Department Permit

The CM@Risk is advised that a Dust Control Permit and Dust Control Plan may be required by the Maricopa County Air Quality Department. It shall be the CM@Risk's responsibility to obtain this permit, if necessary, and comply with its requirements. Prior to construction, the CM@Risk shall provide a copy of the Dust Control Permit and Plan to the City for Review.

12.39 Electric Power, Water, and Telephone

Unless otherwise specified, the CM@Risk shall make his own arrangements for electric power, water, and telephone. Subject to the convenience of the utility, he may be permitted to connect to existing facilities where available, but he shall meter and bear the cost of such power or water, and installation and disconnect of such power, water, and telephone services.

12.40 Energized Aerial Electrical Power Lines

The utility company may maintain energized aerial electrical power lines in the immediate vicinity of this Project. Do not consider these lines to be insulated. Construction personnel working in proximity to these lines are exposed to an extreme hazard from electrical shock. CMs@Risk, their employees, and all other construction personnel working on this Project must be warned of the danger and instructed to take adequate protective measure, including maintaining a minimum ten (10) feet clearance between the lines and all construction equipment and personnel. (see OSHA Standard 1926.550 (a) 15).

As an additional safety precaution, CM@Risk should also be instructed to call the utility company to arrange, if possible, to have these lines de-energized or relocated when the Work reached their immediate vicinity. The cost of such temporary arrangements shall be borne by the CM@Risk. The utility company can often responds to such request if two (2) days advance notice is given, but some situations may require up to sixty (60) days lead time for relocation or other arrangements.

Electrical utility companies may maintain energized underground electrical power lines in the immediate vicinity of this Project. These power lines represent an extreme hazard of electrical shock to any construction personnel or equipment coming in contact with them. Arizona law requires all parties planning excavation in public rights-of-way to contact all

utility firms for locations of their underground facilities. CM@Risk, their employees, and all other personnel working near any underground power lines must be warned to take adequate protective measure. (see: OSHA Standard 1926-651 (A)).

12.41 Relocation and/or Adjustment of Existing Facilities, Services and Access

If relocation or adjustment of existing facilities is noted on the plans, this is intended to include the relocation or adjustment of items appurtenant to the noted piece of Work, just as if they were specifically called out. If these appurtenant items are lost or broken during construction, they shall be replaced by the CM@Risk with items of equal or better quality, at no additional cost to the City.

12.42 Contractors License Law

Contractor shall comply with, and require all Subcontractors to comply with, State Contractor's license laws and duly registered and licensed.

12.43 Plans and Specifications to the CM@Risk

The CM@Risk shall be provided with seven (7) sets of plans and specifications at no cost from the Contracting Agency, unless otherwise specified.

12.44 Subcontractor's Bonds

The CM@Risk shall work only with Subcontractors who are properly licensed and bonded with the State of Arizona, Registrar of Contractors.

12.45 Signature Page

Refer to Exhibit "A", signature page for signing Contract agreement.

[End of document. Next page is signature page.]

**EXHIBIT A
SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives and bind their respective entities as of the date first written above.

CITY OF EL MIRAGE

CONTRACTOR ("CM@Risk")

Dr. Spencer A. Isom, City Manager

Name: _____

Title: _____

ATTEST:

ATTEST:

Sharon Antes, City Clerk

Name: _____

Title: _____

APPROVED AS TO FORM:

Robert Hall, City Attorney

EXHIBIT B

CITY OF EL MIRAGE, ARIZONA
ENGINEERING DEPARTMENT

CM@Risk's AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS

Part 100, Section 109, General Conditions

El Mirage, Arizona

Date _____

Project No. _____

To the City of El Mirage, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$ _____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right-of-lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the City of El Mirage against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever which said City may suffer arising out of the failure of the undersigned to pay for all labor, performance and materials furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20__.

CM@Risk

By

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 20____,

Notary Public

My Commission expires:

EXHIBIT C

APPROVED GMP PROPOSAL

**El Mirage City Hall
El Mirage, Arizona
Assumptions and Clarifications**



2/8/2016

General:

- GMP pricing is based on plans titled El Mirage City Hall - Construction Documents dated 1/12/2016 as developed by Architekton along with Addendums #1, #2, #3, and #4.
- GMP is based on the incorporation of the accepted cost reduction items detailed on BVA list dated 2/8/2016.

Proposed GMP:	\$6,600,000
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Allowances: (Included in above)

- Testing and Special Inspections	\$30,000
- Furniture, Fixtures, & Equipment (FFE)	\$250,000
- TV's not included in AV system	\$10,000
- Signage	\$15,000
- Utility Company Fees	\$50,000

Clarifications:

- Excess material (approximately 10,000 cy) will be hauled to the city treatment plant and graded.
- Bird control netting will be installed where shown using 3/4" black netting and galvanized cable
- Water meters to be included in the "Utility Company Fees" above
- 48" Mulga's trees are not available now and may not be available at time of planting. See VE options.
- 1/2" blue glass seeded in exposed floor in Council Chambers floor is based on maximum of .75 lbs per sf
- Includes drive entry off of El Mirage Rd (see VE options). All other off-site improvements on El Mirage Rd by others
- Includes off-site improvements on Mountain View Road as shown on plans
- Sidewalks within drive isles are to be 6" thick. (See VE Options)
- Wood ceilings (CL3) and wood wall panels (WP1) is based on 1x4 Western Red Cedar over landscape fabric on plywood backing per details 3,8/AE-551 and 5,6/AE-552 and not as manufactured by "Nine Wood" as specified
- The MLT-2 panel on Veil is prefinished on the front side only and will be standard "Off-White" on the back side
- Wood door veneer sample was not available therefore price is based on "AA" grade, book and center balance matched, plain sliced cherry faced veneers
- TL-1 and TL-2 tile is based on 8" x 48" tile (largest format available) vs 8" x 67" specified
- Rubber floor in elevator cab is based on 24" x 24" tiles versus roll goods per limited quantity
- Rubber based is based on standard profile and not a millwork profile
- Polished concrete floors are to be stained and not integral colored
- Elevator is based on ThyssenKrupp Elevator Endura MRL 2500 lbs capacity at 100 fpm speed
- Primary conduit beyond what is shown on plans is part of "Utility Company Fee"

Excluded:

- Mud setting of tile
- Integral colored concrete
- Millwork profile on rubber base
- Phone and computer system equipment or installation
- Security system support system or monitoring agreement

El Mirage City Hall

Best Value Analysis - GMP - R1

Budget Date 2/8/2016

BVA Date 2/8/2016



	Description	Possible Cost Impact	Items Incorporated	Rejected Items	Either/Or	Notes
1	Change all 48" box trees to 36" box trees	(\$14,897)	(\$14,897)			
2	Raise sunken grass areas (2) to flush with adjacent grade. Eliminate concrete steps and replace with 12" wide flush curb. Eliminate ramps, structural soil and root barrier.	(\$55,775)	(\$55,775)			
3	Replace Arcadia TI Profiles series window frames with Arcadia AFG-451 series T windows type S (lower only), R (lower only), W, X, Z1, and Z2. Replace D, E, F, G, H, K, P, Q, T, U, and V to U-Channel or angle.	(\$10,789)	(\$10,789)			Elevations A, B, and C cannot be changed to AFG451 due to windload and deadload requirements.
4A	Eliminate TL2 in corridor 200 and the corridor south of the core and replace with CPT1	(\$7,131)	(\$7,131)		4B	Can not take 4A along with 4B
4B	Eliminate all TL2 tile on the second floor with the exception of rooms 219, 222, 226, 227 and at drinking fountain. Replace with CPT2 at room 217, 218, 220, 221, replace with VCT in room 228 and replace with CPT1 in all remaining areas.	(\$17,420)		(\$17,420)	4A	Can not take 4A along with 4B
5	Use alternate manufacturer for light fixtures/controls. Architect to review for approval.	(\$23,646)	(\$23,646)			Verify fixtures
6	Eliminate A14 Robe Hooks and A15 Soap Dispensers. Use "Bradley" hand dryer.	(\$6,189)	(\$6,189)			
7	Replace glass rail at Patio 223 and north of Meeting Space 201 with cable rail per detail.	(\$11,359)	(\$11,359)			
8	Eliminate (2) projectors and screens in Council Chambers (rough in for future). Eliminate lift from remaining projector and solid mount to structure/ceiling.	(\$24,249)	(\$24,249)			
9	Eliminate shower in City Manager's office. Enlarge closet.	(\$3,026)	(\$3,026)			
10	Delete concrete walks in asphalt paving to Dog Park. Replace with asphalt paving and stippling only.	(\$2,205)	(\$2,205)			
11	Delete concrete drive entry at El Mirage Road. Provide temp asphalt drive.	(\$5,162)	(\$5,162)			
12	Delete precast bumpers @ Mountain View Road parking spaces	(\$910)	(\$910)			
13	Delete fiber cable from City Hall to Police Station	(\$7,555)	(\$7,555)			
14	Delete conduit from property line to Police Station for fiber cable	(\$11,823)	(\$11,823)			
15	Change conduits from City Hall to property line from (2) 4" to (2) 3". Reduce size of HH to 24" x 24" x 24"	(\$2,069)	(\$2,069)			
16	Change conduits from City Hall to HH at SE corner from (4) 4" to (3) 3". Reduce size of HH to 24" x 24" x 24"	(\$2,995)	(\$3,000)			Provide 3 - 3"
17	Reduce number of tele/data outlets by (15) each in select offices as directed by Architektor	(\$5,255)	(\$5,255)			
18	Reduce number of security cameras as directed by owner.	Pending				
19	Eliminate metal enclosure around Generator/Transformer. Paint Generator/Transformer. Add (6) metal bollards.	(\$14,524)	(\$14,524)			
20	Delete counterpoise system	(\$9,459)	(\$9,459)			Need to be sure this is acceptable.
21	Use PVC pipe & fittings above grade waste, vent, & roof drainage systems	(\$6,385)	(\$6,385)			
22	In Council Chambers room 102, eliminate the (5) floor boxes located at the Dias. Instead, sweep conduit into the millwork and provide wall outlets on the back side of the pony wall.	(\$1,182)	(\$1,182)			
23	Delete 1/2" coverboard at roof system and use UL rated rigid insulation to maintain rated assembly.	(\$5,912)	(\$5,912)			
24	#8619LED.	\$1,150		\$1,150		The BEGA bollard is more expensive than what is originally designed.

El Mirage City Hall

Budget Date 2/8/2016



Best Value Analysis - GMP - R1

BVA Date 2/8/2016

	Description	Possible Cost Impact	Items Incorporated	Rejected Items	Either/Or	Notes
25	Use chrome hardware and brackets ILO stainless steel on toilet partitions & urinal screen	(\$2,365)	(\$2,365)			
26	"Fixed Seating" in Council Chambers to be included in the FFE Allowance	(\$9,046)	(\$9,046)			
27	Reduce contractor's contingency.	(\$21,582)	(\$21,582)			
	TOTAL TO DATE		(\$265,495)			

Project Construction Budget Target	\$6,600,000
Current Project Estimate w/o VE Items	\$6,865,495
Value Engineering to be incorporated	(\$265,495)
Current Estimate inc VE - GMP	\$6,600,000
Variance from Target Budget - (\$)= under budget	\$0

**HAYDON BUILDING CORP
EL MIRAGE CITY HALL
RECAP OF BUDGET & BID ITEMS R-1
2/8/2016**



CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	General Conditions Budget	\$400,000	\$ 397,275	\$397,275	(\$2,725)
	Allowances				
	Testing & Special Inspections	\$50,000	\$30,000	\$30,000	(\$20,000)
	FFE	\$250,000	\$250,000	\$250,000	\$0
	TV's	\$10,000	\$10,000	\$10,000	\$0
	Signage	\$15,000	\$15,000	\$15,000	\$0
	Utility Company Fees	\$50,000	\$50,000	\$50,000	\$0
	Staking	\$20,507		\$13,540	(\$6,967)
	C&M		\$13,540		
	Ament		\$15,500		
	Lemme		\$18,820		
	Earthwork & Paving	\$343,033		\$280,491	(\$62,542)
	YSC		\$280,491		
	Gunsight		\$312,114		
	Dykstra		\$342,970		
	Marks Grading		\$348,879		
	VE Item 11		\$3,000	\$3,000	\$3,000
	Utilities	\$64,785		\$102,717	\$37,932
	RF Pipeline		\$102,717		
	Redpoint		\$135,800		
	Atwater		\$172,885		
	Drywells	\$36,000		\$8,500	(\$27,500)
	Torrent		\$8,500		
	Pinal		\$11,399		
	Misc Site Items				
	Benches - 10 each	\$13,500	\$13,600	\$13,600	\$100
	Flag Pole - 1 each	\$3,500	\$4,100	\$4,100	\$600
	Covered Canopies - None	\$13,200	\$0	\$0	(\$13,200)
	Trash & Litter Receptor - 1 of each	\$0	\$3,698	\$3,698	\$3,698
	Pavement Markings	\$5,900	\$4,830	\$4,830	(\$1,070)
	VE Item 10		\$500	\$500	\$500
	VE Item 12		(\$770)	(\$770)	(\$770)
	Landscape	\$131,274		\$169,000	\$37,726
	Sierra Sun		\$169,000		
	AME Landscape		\$176,718		
	Ronning		\$178,910		
	AAA		\$199,600		
	Earthscape		\$215,693		
	VE Item 1		(\$12,600)	(\$12,600)	(\$12,600)
	VE Item 2		(\$37,000)	(\$37,000)	(\$37,000)
	Pavers	\$30,460	\$33,485	\$33,485	\$3,025
	Termite Pretreat	\$1,982		\$710	(\$1,272)
	Mr. Bugman		\$710		

HAYDON BUILDING CORP
EL MIRAGE CITY HALL
RECAP OF BUDGET & BID ITEMS R-1
2/8/2016



CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	Contractors SOS City Wide <i>Bird Netting</i>		\$1,072 \$1,350 \$1,725 \$0 \$14,139		
	Concrete J&R LR Cowan Atwater Concrete Division 3 Jones Concrete <i>VE Item 2</i> <i>VE Item 10</i> <i>VE Item 11</i> <i>VE Item 19</i>	\$289,207	\$310,555 \$321,800 \$322,000 \$337,984 \$354,937 (\$10,174) (\$2,365) (\$7,366) (\$1,250)	\$310,555 (\$10,174) (\$2,365) (\$7,366) (\$1,250)	\$21,348 (\$10,174) (\$2,365) (\$7,366) (\$1,250)
	Masonry G&G Stone Cold Stoll	\$62,679	\$39,042 \$43,844 \$71,500	\$39,042	(\$23,637)
	Structural & Misc Steel Castle Amber Steel Maricopa Steel Metal Weld <i>VE Item 7</i> <i>VE Item 19</i>	\$384,061	\$410,904 \$449,175 \$456,621 \$507,255 \$11,413 (\$10,577)	\$410,904 \$11,413 (\$10,577)	\$26,843 \$11,413 (\$10,577)
	Rough Carpentry MVP CMR T bar H	\$149,138	\$150,780 \$152,917 \$165,870	\$150,780	\$1,642
	Cabinetry & Millwork Crown Custom AZ Custom Sierra Sun Valley	\$170,750	\$256,847 \$263,927 \$308,644 \$349,664	\$256,847	\$86,097
	Insulation Mesa Rite-Way King	\$71,610	\$25,213 \$28,366 \$59,615	\$25,213	(\$46,397)
	Roofing Roofing SW Century Roofing Progressive <i>VE Item 23</i>	\$82,425	\$76,840 \$86,350 \$93,560 (\$5,000)	\$76,840 (\$5,000)	(\$5,585) (\$5,000)
	General Sheet Metal AARA	\$422,865	\$221,720	\$221,720	(\$201,145)

**HAYDON BUILDING CORP
EL MIRAGE CITY HALL
RECAP OF BUDGET & BID ITEMS R-1
2/8/2016**



CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	Western Bldg Group TMS		\$283,600 \$470,724		
	<i>VE Item 19</i>		(\$2,937)	(\$2,937)	(\$2,937)
	Caulking / Waterproofing	\$11,520		\$10,250	(\$1,270)
	AK&J		\$10,250		
	Western		\$13,757		
	Rite-Way		\$13,870		
	RTI		\$14,030		
	Hollow Metal, Doors & Hardware	\$65,350		\$46,367	(\$18,983)
	LaForce		\$46,367		
	KWC		\$51,099		
	American Direct		\$52,916		
	Glass & Glazing	\$414,721		\$518,950	\$104,229
	AZ Glass		\$518,950		
	Sierra		\$598,783		
	Mirror Works		\$701,050		
	<i>VE Item 3</i>		(\$9,125)	(\$9,125)	(\$9,125)
	<i>VE Item 7</i>		(\$21,370)	(\$21,370)	(\$21,370)
	Stud Framing & Drywall	\$359,048		\$256,115	(\$102,933)
	AZ Wall		\$256,115		
	Extreme Drywall		\$354,150		
	E&K		\$391,000		
	Thermocromex	\$64,215		\$62,500	(\$1,715)
	SPG		\$62,500		
	Division Nine		\$75,460		
	AZ Stucco		\$79,950		
	Structures Stucco		\$138,400		
	Ceramic Tile	\$77,575		\$128,638	\$51,063
	Wholesale Floors		\$128,638		
	ReSource		\$146,682		
	Sun Country		\$149,855		
	<i>VE Item 4a</i>		(\$6,031)	(\$6,031)	(\$6,031)
	<i>VE Item 9</i>		(\$1,059)	(\$1,059)	(\$1,059)
	Acoustical Ceiling	\$65,005		\$53,900	(\$11,105)
	TP		\$53,900		
	E&K		\$59,200		
	Sunset		\$60,500		
	Floor Coverings	\$61,295		\$45,212	(\$16,083)
	Wholesale		\$45,212		
	ReSource		\$45,350		
	Sun Country		\$45,586		
	Ground Concrete	\$30,304		\$24,170	(\$6,134)
	STX Flooring		\$24,170		

**HAYDON BUILDING CORP
EL MIRAGE CITY HALL
RECAP OF BUDGET & BID ITEMS R-1
2/8/2016**



CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	QuestMark Wholesale PDCI ReSource		\$27,540 \$28,588 \$29,633 \$39,924		
	Final Cleaning Budget	\$9,042	\$9,295	\$9,295	\$253
	Painting Real Property E&K Wiese VE Item 7 VE Item 19	\$58,328	\$44,884 \$46,984 \$49,164 \$350 \$500	\$44,884 \$350 \$500	(\$13,094) \$350 \$500
	Misc Specialties FEC Appliances	\$16,005	\$2,500 \$7,070	\$2,500 \$7,070	(\$6,435)
	Toilet Partitions & Accessories American Direct Beach VE Item 6 VE Item 9 VE Item 25	\$15,000	\$42,800 \$44,730 (\$5,235) (\$500) (\$2,000)	\$42,800 (\$5,235) (\$500) (\$2,000)	\$27,800 (\$5,235) (\$500) (\$2,000)
	Window Treatment MSD Royal Textile PCI Blinds & Beyond	\$30,033	\$4,599 \$5,310 \$6,947 \$7,050	\$4,599	(\$25,434)
	Fixed Audience Seating Irwin Norcon VE Item 26	\$0	\$7,651 \$16,125 (\$7,651)	\$7,651 (\$7,651)	\$7,651 (\$7,651)
	Elevator ThyssenKrupp	\$60,000	\$73,185	\$73,185	\$13,185
	Wet Fire Protection Complete Benson RCI AERO	\$49,523	\$45,344 \$45,817 \$62,190 \$65,980	\$45,344	(\$4,179)
	Plumbing TekStar Sunstate Newgaard VE Item 9	\$108,463	\$124,000 \$157,500 \$227,992 (\$1,000)	\$124,000 (\$1,000)	\$14,537 (\$1,000)

HAYDON BUILDING CORP
EL MIRAGE CITY HALL
RECAP OF BUDGET & BID ITEMS R-1
2/8/2016



CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	<i>VE Item 21</i>		(\$5,400)	(\$5,400)	(\$5,400)
	HVAC	\$440,200		\$376,185	(\$64,015)
	Grazak		\$376,185		
	Comfort Systems		\$426,655		
	Newgaard		\$510,534		
	Electrical	\$531,603		\$629,158	\$97,555
	Echo Canyon		\$629,158		
	AME		\$648,972		
	Commonwealth		\$706,207		
	Rosendin		\$864,478		
	<i>VE Item 5</i>		(\$20,000)	(\$20,000)	(\$20,000)
	<i>VE Item 14</i>		(\$10,000)	(\$10,000)	(\$10,000)
	<i>VE Item 15</i>		(\$1,750)	(\$1,750)	(\$1,750)
	<i>VE Item 16</i>		(\$2,533)	(\$2,533)	(\$2,533)
	<i>VE Item 17</i>		(\$320)	(\$320)	(\$320)
	<i>VE Item 20</i>		(\$8,000)	(\$8,000)	(\$8,000)
	<i>VE Item 22</i>		(\$1,000)	(\$1,000)	(\$1,000)
	Fire Alarm	\$27,513		\$16,492	(\$11,021)
	Signal One		\$16,492		
	Firetrol		\$18,782		
	Netsian		\$19,525		
	Simplex		\$27,255		
	Benson		\$29,351		
	Structured Cabling	\$60,000		\$67,933	\$7,933
	Accram		\$67,933		
	Cable Solutions		\$68,023		
	ABCOM		\$72,493		
	Netsian		\$74,384		
	<i>VE Item 13</i>		(\$6,390)	(\$6,390)	(\$6,390)
	<i>VE Item 17</i>		(\$4,125)	(\$4,125)	(\$4,125)
	Security System	\$44,020		\$109,745	\$65,725
	Convergint		\$109,745		
	Aspen		\$115,235		
	APL		\$130,581		
	A/V System	\$0		\$135,823	\$135,823
	TPI		\$135,823		
	AVR		\$184,071		
	Aspen		\$193,459		
	AVDB		\$261,286		
	<i>VE Item 8</i>		(\$20,510)	(\$20,510)	(\$20,510)
	SUBTOTAL - Base Construction	\$5,670,639		\$5,527,477	(\$143,162)
	Contractors Contingency	\$282,257		\$264,349	(\$17,908)
	Liability Insurance	\$47,419		\$46,335	(\$1,084)
	Builders Risk	\$17,782		\$17,375	(\$407)

HAYDON BUILDING CORP EL MIRAGE CITY HALL RECAP OF BUDGET & BID ITEMS R-1 2/8/2016					 HAYDON
CODE	DESCRIPTION	DD Estimate Dated 11/13/2015	Estimate / Bid Recap	Current GMP Budget	Delta From DD Estimate
	Bond	\$50,549		\$49,393	(\$1,156)
	Fee	\$327,278		\$318,550	(\$8,728)
	Tax	\$386,540		\$376,520	(\$10,020)
	TOTAL PROJECT COST	\$6,782,464		\$6,600,000	(\$182,464)

EXHIBIT D

TECHNICAL SPECIFICATIONS

Technical Specifications are available in the City Clerk's office

EXHIBIT E

GMP CLARIFICATIONS, INCLUSIONS & EXCLUSIONS

**El Mirage City Hall
El Mirage, Arizona
Assumptions and Clarifications**



2/8/2016

General:

- GMP pricing is based on plans titled El Mirage City Hall - Construction Documents dated 1/12/2016 as developed by Architekton along with Addendums #1, #2, #3, and #4.
- GMP is based on the incorporation of the accepted cost reduction items detailed on BVA list dated 2/8/2016.

Proposed GMP:	\$6,600,000
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Allowances: (Included in above)

- Testing and Special Inspections	\$30,000
- Furniture, Fixtures, & Equipment (FFE)	\$250,000
- TV's not included in AV system	\$10,000
- Signage	\$15,000
- Utility Company Fees	\$50,000

Clarifications:

- Excess material (approximately 10,000 cy) will be hauled to the city treatment plant and graded.
- Bird control netting will be installed where shown using 3/4" black netting and galvanized cable
- Water meters to be included in the "Utility Company Fees" above
- 48" Mulga's trees are not available now and may not be available at time of planting. See VE options.
- 1/2" blue glass seeded in exposed floor in Council Chambers floor is based on maximum of .75 lbs per sf
- Includes drive entry off of El Mirage Rd (see VE options). All other off-site improvements on El Mirage Rd by others
- Includes off-site improvements on Mountain View Road as shown on plans
- Sidewalks within drive isles are to be 6" thick. (See VE Options)
- Wood ceilings (CL3) and wood wall panels (WP1) is based on 1x4 Western Red Cedar over landscape fabric on plywood backing per details 3,8/AE-551 and 5,6/AE-552 and not as manufactured by "Nine Wood" as specified
- The MLT-2 panel on Veil is prefinished on the front side only and will be standard "Off-White" on the back side
- Wood door veneer sample was not available therefore price is based on "AA" grade, book and center balance matched, plain sliced cherry faced veneers
- TL-1 and TL-2 tile is based on 8" x 48" tile (largest format available) vs 8" x 67" specified
- Rubber floor in elevator cab is based on 24" x 24" tiles versus roll goods per limited quantity
- Rubber based is based on standard profile and not a millwork profile
- Polished concrete floors are to be stained and not integral colored
- Elevator is based on ThyssenKrupp Elevator Endura MRL 2500 lbs capacity at 100 fpm speed
- Primary conduit beyond what is shown on plans is part of "Utility Company Fee"

Excluded:

- Mud setting of tile
- Integral colored concrete
- Millwork profile on rubber base
- Phone and computer system equipment or installation
- Security system support system or monitoring agreement

EXHIBIT G

CONSTRUCTION DOCUMENTS

Construction Documents are available in the City Clerk's office



REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: <u>02/03/2016</u> DATE ACTION REQUESTED: <u>02/16/2016</u> <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	TYPE OF ACTION: <input checked="" type="checkbox"/> RESOLUTION # R16-02-03 <input type="checkbox"/> ORDINANCE # _____ <input type="checkbox"/> OTHER:	SUBJECT: Consideration and action to approve Resolution R16-02-03 calling for a Primary and General Election in 2016, designating the election dates and purpose of the elections, designating the deadline for voter registration, designating the election format, and designating the place and first and last date for candidates to file nomination papers.
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TO: Mayor and Council
FROM: Sharon Antes, City Clerk <i>SA</i>
RECOMMENDATION: Approve Resolution R16-02-03 that calls for a Primary and General Election in 2016 and provides specifics about purposes, places, formats, dates and times.
PROPOSED MOTION: I move that Resolution R16-02-03 be approved as presented.
ATTACHMENTS: Resolution R16-02-03

DISCUSSION: 2016 is an election year with a Primary Election to be held in August and a General Election to be held in November, 2016. Resolution R16-02-03 is a formality required to be able to place items on the election ballots and notify Maricopa County that the City has Council seats open to be considered by the residents of El Mirage in the election process.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

Finance Director:

R. Nilles

 Robert Nilles

2/11/16

 Date

Approved as to form:

Robert M. Hall

 Robert M. Hall, City Attorney

2/11/16

 Date

City Manager:

S. Isom

 Dr. Spencer A. Isom

2/11/16

 Date

RESOLUTION R16-02-03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, CALLING FOR A PRIMARY AND GENERAL ELECTION; DESIGNATING THE ELECTION DATES AND PURPOSE OF ELECTIONS; DESIGNATING THE DEADLINE FOR VOTER REGISTRATION; DESIGNATING THE ELECTION FORMAT; AND DESIGNATING THE PLACE AND FIRST AND LAST DATE FOR CANDIDATES TO FILE NOMINATION PAPERS.

BE IT RESOLVED, by the Mayor and Council of the City of El Mirage, as follows:

Section 1. Call for Elections; Designation of Election Dates; Purpose:

The Mayor and Council of the City of El Mirage hereby call for a Primary Election in the City of El Mirage to be held on Tuesday, August 30, 2016, for the purpose of nominating candidates for the three (3) Councilor seats expiring December 2016, whose names shall appear on the ballot at the General Election, should a run-off election be required. Any candidate receiving a majority of all the ballots cast at the Primary Election will be declared elected to the office for which he or she is a candidate effective as of the date of the General Election. The Mayor and Council of the City of El Mirage also hereby call for a General Election in the City of El Mirage to be held on Tuesday, November 8, 2016, if required, for the Council seats.

Section 2. Designating Deadline for Voter Registration:

Maricopa County registration and voting lists will be used for the municipal election. In order to be qualified to vote, a voter must be registered by August 1, 2016 for the August 30, 2016 Primary Election and by October 10, 2016 for the November 8, 2016 General Election.

Section 3. Designating Election Format

The election format for both the Primary Election in August, 2016 and the General Election in November, 2016, if needed, shall be by a Polling Place Election.

Section 4. Designating Date and Place to File Candidate Nomination Form:

Candidates seeking municipal office may obtain a Candidate Packet at the El Mirage City Clerk's Office, 12145 NW Grand Avenue, El Mirage, beginning February 1, 2016 which includes nomination papers and other materials which must be filed by candidates. Candidates may submit or return nomination papers and other nomination forms no earlier than Monday, May 2, 2016 at 8:00 a.m. and must be filed no later than 5:00 p.m. on Wednesday, June 1, 2016 at the El Mirage City Clerk's Office, 12145 NW Grand Avenue, El Mirage, in order for their names to appear on the Primary Election ballot.

PASSED AND ADOPTED by the Mayor and Council of the City of El Mirage, Arizona,
this _____ day of February, 2016.

Lana Mook, Mayor

ATTEST:

APPROVED AS TO FORM:

Sharon Antes, City Clerk

Robert M. Hall, City Attorney

RESOLUTION R16-02-04

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, MARICOPA COUNTY, ARIZONA, APPROVING AND ADOPTING THE COMPENSATION PLAN FOR FISCAL YEAR 2016-2017.

WHEREAS, The City of El Mirage Personnel Policy Manual section 3.5 “Compensation Plan” states that “the City Manager will direct the preparation, development and maintenance of a market competitive and internally equitable Compensation Plan covering all job classifications. In arriving at salary rates or ranges, consideration shall be given to prevailing rates of pay and consideration of working conditions for comparable work in public and private sectors, current costs of living, suggestions of Department Directors, the City’s financial condition and policies, and any other factors the City Manager deems relevant;” and,

WHEREAS, The City of El Mirage Personnel Policy Manual section 3.5 “Compensation Plan” states that “the Compensation plan shall be approved and may be amended and revised from time-to-time by the City Manager and ratified by the City Council through the annual budgetary process. No employee’s compensation shall be set outside the range for that job classification in the most current Compensation Plan;” and,

WHEREAS, The City of El Mirage Personnel Policy Manual section 3.18 “Reclassification” states that “When an occupied position is reclassified or assign to a lower pay range, the employee’s pay shall not be decreased. However, if the top of the range of pay for the reclassified/reassigned position is lower than the employee’s pay, the employee shall not be eligible for any further pay increases until the top of the range of pay of the position is increased above the employees level of pay (i.e., the employee’s pay will be “redlined” until the pay range increases),”

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Mirage that the Compensation Plan shown on the attached schedule is hereby adopted as the Compensation Plan for the City of El Mirage for Fiscal Year 2016-2017.

APPROVED AND ADOPTED by the City Council this 16th day of February, 2016.

Lana Mook, Mayor

ATTEST:

APPROVED AS TO FORM:

Sharon Antes, City Clerk

Robert Hall, City Attorney