



LAKE HAVASU CITY, ARIZONA

DESIGN-BUILD MANAGER

PRECONSTRUCTION CONTRACT

PRECONSTRUCTION PHASE SERVICES

PROJECT NO. 102022

CONTRACT NO. 500685

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THIS CONTRACT, entered into this _____ day of _____ 2025, by Lake Havasu City, an Arizona municipal corporation, ("City") and Concord General Contracting, Inc., an Arizona corporation, ("Design-Build Manager" or "DBM").

RECITALS

- A.** The City intends to construct the Aquatic Center Outdoor Pool Project, located at 100 Park Ave, Lake Havasu City, Arizona 86403 and referred to in this Contract as the "Project."
- B.** The DBM represented to the City the ability to provide construction management services and to construct the Project. The City desires to enter into this Contract with the DBM for the preconstruction phase services identified in this Contract. At the end of the preconstruction phase, at the City's discretion, the City may enter into a separate construction contract with the DBM for, or amend this Contract, to include construction phase services.

CONTRACT

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, it is agreed between the City and the DBM as follows:

ARTICLE 1 – BASIC PRECONSTRUCTION PHASE SERVICES

1.0 GENERAL

- A.** The DBM, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Lake Havasu City, Arizona, would exercise at that time, under similar conditions. The DBM will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- B.** Project Meetings: The DBM will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, and Construction Documents rolling reviews.
- C.** The DBM is responsible for managing and coordinating the design phase services performed by its DBM Design Team, ensuring they are consistent with the Scope of Work, Exhibit A, and the most current Drawings and Specifications. The DBM shall proactively identify and resolve design issues and promptly notify the City in writing of any errors, omissions, or necessary changes in the Drawings or Specifications

that may affect the cost estimate, Project Schedule, Guaranteed Maximum Price (GMP) Proposals or Contract Time for the Work, to the extent they are established.

- D. The DBM, when requested by the City with reasonable notice, will attend, make presentations and participate as may be appropriate, in public or community meetings related to the Project. The DBM will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any public agency meetings.

1.1 CONSTRUCTION MANAGEMENT PLAN

- A. The DBM will prepare a Construction Management Plan, which includes but is not limited to the DBM's professional opinions concerning: (1) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (2) plans for investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing physical surface and subsurface facilities and underground utilities, (3) alternate strategies for fast-tracking or phasing the construction, (4) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (5) any Intergovernmental Contracts (IGAs), (6) permitting strategy, (7) safety and training programs, (8) construction quality control, (9) a commissioning program, (10) the cost estimate and basis of the model, (11) a matrix summarizing each Project Team member's responsibilities and roles, and (12) goal compliance strategy.
- B. The DBM will continue updating the Construction Management Plan during the preconstruction phase so it remains current and is ready for implementation at the start of construction. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, the DBM, or DBM Design Team (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking, if any, of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) or materials, and (g) funding issues identified by the City.

1.2 PROJECT SCHEDULE

- A. The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize those Deliverables as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The DBM will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule is subject to City approval. The Project Schedule will be consistent with the most recent revised/updated Critical Path Method. The Project Schedule will use the Critical

Path Method technique, unless required otherwise in writing by the City. The DBM will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule will be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in Article 1.4(A).

- B. The DBM will develop and maintain the Project Schedule incorporating the services and activities required of the City, the DBM, and the DBM's Design Team to ensure alignment and readiness for the construction phase.
- C. The Project Schedule will be updated and maintained by the DBM throughout this Contract to assure that the schedule will not require major changes at the start of the construction phase to incorporate the DBM's plan for the performance of the construction phase Work. The DBM will provide updates or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The DBM will include with these submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
 - 1. Project Phasing (Optional): At the City's direction, the DBM and the DBM Design Team will evaluate the Project and propose phased construction strategies. If phased construction is appropriate, the DBM will prepare phased Construction Documents to support phased delivery of the Work considering work divisions, sequencing, site access, schedule market conditions, and labor and materials availability, and any other pertinent factors.

1.3 PROJECT DESIGN

- A. The DBM will, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by the DBM, or procured from qualified, independent licensed design consultants, the necessary Design Services, including DBM (including landscape DBM), engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit the DBM to complete the Work consistent with the Contract Documents. The DBM's design professionals will seal with an Arizona registered professional seal all plans, works, and Deliverables prepared by them for this Contract as required by State law.
- B. The DBM will provide a Project Schedule of the design activities within 7 Days after the Notice to Proceed ("NTP").
- C. The Project Schedule will provide 20 business days to be used by the City or its designee for reviews and approvals for any interim design submissions.
- D. Design activities will commence immediately after the NTP is issued and the DBM will monitor design efforts to ensure they are in accordance with the Project Schedule and will provide adequate time for the City's review and permitting

processes along with construction activities. All work accomplished under the Design phase of the Work will be in accordance with Exhibit A, Scope of Work, Task 2 attached and incorporated by this reference.

- E. Upon approval of the design/construction documents, the DBM will proceed with the Subcontractor selection process as required by Article 1.9.
- F. The standard of care for all design professional services performed to execute the Work will be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Despite the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, the standards are to be stated in an exhibit to this contract entitled "Performance Standard Requirements," the design professional services will be performed to achieve these standards.
- G. The DBM will be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and will correct, at its expense, all willful or negligent errors, omissions and acts which may be discovered. Correction of willful or negligent errors, omissions and acts discovered on DBM or engineering plans and specifications will be the responsibility of the DBM. The cost of the design necessary to correct those errors attributable to the DBM will not be reimbursable costs to the DBM. Any damage incurred by the City as a result of additional construction cost caused by negligent, reckless, or intentional wrongful conduct will not be reimbursed to the DBM to the extent that the negligent, reckless, or intentional wrongful conduct falls below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the DBM's product will in no way relieve the DBM of any of its responsibilities.
- H. Throughout the design process, the DBM is required to evaluate construction costs and materials availability and present value engineering options.

1.4 DESIGN SERVICES

- A. The DBM will provide all interim design submissions and Deliverables as prescribed in the Design Standards and Guidelines provided by the City, and as shown on the Project Schedule. The DBM will be responsible for all aspects of the design including design build subcontractors, design assist consultants, building information modeling (BIM), and other design components procured through the DBM to the extent that any of these items are used.
 - 1. Within 7 Days after a scheduled submission, the DBM and the City will meet and confer about the submissions, with the DBM identifying during these meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract documents, or previously submitted design submissions.
 - 2. For design progress submittals, the DBM will submit and distribute *one electronic pdf copy*. For the permit and plan submittal, distribute *one*

electronic pdf copy and up to 2 hard copy sets of plans and specifications and one set of plans in AutoCAD format compatible with City's Computer Aided Drafting and Design (CADD) technology. PDF file(s) shall be fully indexed using the Table of Contents, searchable with thumbnails generated pdf and the specifications and other submittal information by index. PDF images must be at a readable resolution. For most documents, they should be scanned or generated at 300 dots per inch (DPI). Use of higher resolution is acceptable with City approval. Optical Character Recognition (OCR) capture must be performed on these images so that text can be searched selected and copied from the generated PDF file. The PDF documents shall have a bookmark created in the navigation frame for each major entry ("Section" or "Chapter") in the Table of Contents. Thumbnails shall be generated for each page or graphic in the PDF file.

3. Minutes of the meetings will be maintained by the DBM and provided within 5 Days following the design review meeting to all attendees for review.
 4. The City will review and approve the interim design submissions in a time that is consistent with working days as indicated in 1.4.C.
 5. The DBM will not cause the design to proceed until the City approves the interim design submissions as provided in this Article. If the DBM allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost.
 6. The City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither the City's review nor approval of any interim design submissions and Construction Documents will be considered to transfer any design liability to the City.
 7. DBM shall identify all areas that do not have enough scope definition to design. This should include a brief summary of what information is missing and what is required to fully develop the scope.
- B. The Project design must meet all applicable international, state and local building codes (i) all City building standards; and (ii) will include all special provisions provided by the City and all other applicable code requirements.
- C. The Project design criteria and specifications will be in accordance with the Design Standards and Guidelines provided by the City. Variances for the standards and guidelines must be identified in writing by the DBM and approved by the City. The DBM will identify conflicts between the Design Standards and Guidelines and the requirements in Article 1.4 above or Legal Requirements and will obtain concurrence with resolution of the conflict. The Design Standard and Guidelines or approval of variances or resolution of conflicts will not be considered to transfer any design liability to the City.

- D. The DBM will not specify any construction materials known to be hazardous or potentially hazardous, including but not limited to, asbestos, lead or any derivative of them unless specifically approved in writing by the City.
- E. The DBM will coordinate with private, public and City utilities (i.e. Information Technology Division, Water Division) regarding standard utility issues and incorporate pertinent information in the plans.
- F. The DBM will be responsible for scheduling, submitting, obtaining approval and retrieving of all required Construction Documents to the various required reviewing agencies.
- G. The DBM will submit to the City Construction Documents stating in detail drawings and specifications describing the requirements for construction.
 - 1. The Construction Documents will be consistent with the latest set of interim design submissions; as these submissions may have been modified in a design review meeting.
 - 2. The DBM will provide the drawings in AutoCAD format compatible with City's CADD technology using City layering standards.
 - 3. The drawing format will be a 24" x 36" sheet size unless otherwise authorized in writing by the City.
 - 4. The parties will have a design review meeting to discuss, and the City will review and approve, the Construction Documents in accordance with the procedures stated in this Article.

To the extent not prohibited by Legal Requirements, the DBM may arrange for interim design submissions and Construction Documents for a portion of the construction to permit construction to proceed on that portion before completion of the Construction Documents for the entire construction.

1.5 GENERAL DESIGN DOCUMENT REVIEWS

- A. The DBM shall monitor design development for cost, schedule, and constructability impacts, including labor, materials, equipment, and building systems. With City approval, the DBM may recommend additional investigations to support reliable design and construction. The DBM shall advise the Project Team on feasibility, coordination, and cost implications, promptly identify errors or omissions; and recommend cost-effective alternatives.
- B. Constructability and Biddability Reviews: The DBM shall review Drawings and Specifications for clarity, consistency, and coordination of Subcontractors and Supplier work. Constructability reviews shall address construction efficiency, standardization, modularization, site access, staging, and sequencing. Biddability reviews shall address document clarity, cross-referencing, material and equipment availability, specification alternatives, and potential site condition issues. Findings

shall be provided in written reports, with meetings held as requested by the City. These reviews support cost and constructability; responsibility for the design documents remains with the DBM Design Team.

- C. Notification of Variance or Deficiency: The DBM shall review Construction Documents for apparent conflicts with applicable laws, statutes, ordinances, building codes, rules and regulations. Any such conflicts shall be promptly reported in writing to the City and DBM's Design Team. Responsibility for compliance remains with the DBM's Design Team.
- D. Alternate Systems Evaluations: At the City's direction, the DBM shall provide value engineering solutions to evaluate alternative systems, approaches, or design changes that may reduce costs while maintaining quality and function. Value engineering solutions may include multiple manufacturers, subcontractor input to systems designs and approaches, alternate system options to save time/money, early procurement suggestions and potentially using multiple subcontractors for main trades to capitalize on cost/manpower. The City will determine which alternatives to implement, the DBM Design Team shall incorporate them into the documents, and the DBM shall reflect related cost in estimates and GMP Proposals.

1.6 PERMITS AND LICENSING

- A. The City will be responsible for the payment or waiver of the following:
 - 1. City review and permit(s) fees for building, encroachment, and demolition permits.
 - 2. City review fees for grading and drainage, water, sewer, and landscaping.
 - 3. Utility design fees for permanent services.
 - 4. City Development Fees.
 - 5. Environmental Permits and Licenses.

1.7 GOVERNMENT APPROVALS AND PERMITS

- A. Unless otherwise provided, the DBM will apply for and obtain or assist the City in obtaining all necessary permits, approvals and licenses required for the prosecution of the Work from any governmental or quasi-governmental entity having jurisdiction over the Project. Fees for City building permits and City encroachment permits will be taken care of by the City. The DBM is specifically required to obtain the necessary environmental permits and/or file the necessary environmental notices. All environmental permits and licenses will be paid by the City in accordance with the provisions of Article 1.6. All other fees and licenses are the responsibility of the DBM.
 - 1. Lake Havasu City Code prescribes the requirements for Building Permits. Permits must be obtained from the Development Services Department.
 - 2. Lake Havasu City Code prescribes the requirements for Encroachment Permits. Permits must be obtained from the Development Services Department.

3. Capital Programs Manager must be notified before the beginning of Work, and Capital Programs Inspector will represent the City for the purpose of inspecting the Work for conformance to Plans, Specifications and details as well as public safety requirements as authorized by City Code.
- B. Copies of all necessary permits and notices must be provided to the Capital Programs Manager before starting the permitted activity. This provision is not an assumption by the City of an obligation of any kind for any violation of the permit or notice requirements.
- C. The DBM will be responsible for City plan review and making application for an obtaining permit(s) for building and demolition permits, but the fees will be paid by the City in accordance with Article 1.6. The DBM will also obtain any necessary regulatory or permitting related reviews for grading and drainage, water, sewer, and landscaping, but any fees will be paid by the City in accordance with Article 1.6. The DBM will be responsible for coordinating utility design work for permanent service to the Project and will ensure that the work takes place in a timely manner and does not impact the Project Schedule. Any utility design fees for permanent services to the Project will be paid by the City in accordance with Article 1.6.
- D. The DBM will be responsible for all other review and permit fees not specifically listed in Article 1.6 above, or as qualified in this Contract.
- E. The DBM is responsible for the cost of construction related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the DBM's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.

1.8 COST ESTIMATES

- A. The DBM shall prepare and submit a Schedule of Values and detailed cost estimates at each design milestone (30%, 60%, and 90%), as well as interim tracking reports identifying cost impacts from value engineering or scope changes. If an estimate indicates costs exceeding the Project budget, the DBM shall recommend design or material adjustments to maintain budget alignment. The DBM shall keep the City informed of significant cost trends and, upon request, prepare preliminary cash flow projections to assist in the financing process.

1.9 GUARANTEED MAXIMUM PRICE (GMP)

- A. GMP Proposal: At the end of the preconstruction phase or at a time determined by the City with reasonable notice, the City will request the DBM to provide a GMP, or series of GMPs if phased construction would be in the City's best interest. The approved form of GMP(s) is stated in Exhibit C, attached and by reference made a part of this Contract.
 1. The GMP shall represent the maximum amount payable by the City for the Work subject to adjustments as provided in this Contract. Buy out savings

are any savings of the DBM's GMP at the conclusion of the selection of Subcontractors. Any savings realized during subcontractor buyout or construction may with City approval, be applied to additional scope returned to the City as unused funds.

B. GMP Composition: The GMP shall consist of the following elements:

1. Costs of the Work (Direct Costs): A negotiated, not-to-exceed amount defined by the individual work items and their associated negotiated unit prices as part of the hard construction phase Work to be defined in a separate construction contract covering direct labor, subcontract costs, materials and equipment incorporated into the Work, temporary materials and equipment, testing, warranties, and approved self-performed work in accordance with the Subcontractor Selection Plan.
2. Indirect Costs: A negotiated amount including General Conditions Costs, Bonds, Insurance, DBM Construction Fee, and taxes.
 - a. General Conditions Costs may include Project supervision and other Indirect Costs according to construction terms as defined in a separate construction contract. These costs are not reflected in other GMP items. Costs may include, but are not limited to, the following: Project Manager, Superintendent, Full-time General Foremen, field workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.) and administrative office personnel. Other costs may include: temporary office, building permit and licensing fees, fencing and other facilities, office supplies, office equipment, minor expenses, utilities, vehicles, fuel, sanitary facilities, and telephone services at the site.
 - b. Payment Bonds, Performance Bonds and Insurance are actual costs applied to Cost of Work and General Conditions Costs as detailed in the GMP Proposal.
 - c. DBM Construction Fee shall be a negotiated fixed fee that is proposed by the DBM for the Project as defined in a separate Construction Contract for management and related services.
 - d. Taxes include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

DBM must secure and maintain, during the life of the Contract, State of Arizona and Lake Havasu City Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

To obtain a Lake Havasu City Transaction (Sales) Tax License Application, please go to the following website:
<https://azdor.gov/transaction-privilege-tax-tpt>

- C. Project Contingency: The “City’s Project Contingency,” is defined in a separate construction contract, or amendment, and shall be added to the GMP to establish the total contract price for construction. The contingency shall be used at the City’s sole discretion for City-directed changes or unforeseen conditions.
- D. GMP Amendments: The GMP is cumulative. Any amendment to the GMP shall be separately negotiated and reflect conditions and risks from that point forward.

1.10 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- A. The DBM shall present the proposed GMP for the entire Work, or portions of the Work if phased, in a format acceptable to the City as set forth in Exhibit C, attached, and by reference made a part of this Contract. The City may request a GMP Proposal at any time during preconstruction with reasonable notice. GMP Proposals shall be consistent with the current cost estimate, construction costs assumptions, and shall include clarifications and assumptions on which the Proposal is based.
- B. Each GMP Proposal shall include the Cost of the Work (Direct Costs), DBM Indirect Costs, General Conditions Costs, Bonds, Insurance, DBM Construction Fee, Taxes, and City’s Project Contingency.
- C. The DBM shall prepare GMP Proposals using the most current signed, sealed, and dated design documents, including all addenda, provided by the DBM Design Team. The DBM shall clearly identify documents relied upon and provide copies to the City and DBM Design Team.
- D. Each GMP Proposal shall include an updated Project Schedule reflecting the Scope of Work shown in the design documents on which the GMP Proposal is based, consistent with Article 1.2.
- E. The DBM guarantees to bring the completion of the design and construction of the Project with the GMP or DBM alone will be required to pay the difference between the actual cost and the GMP.
- F. If the final construction cost is less than the approved GMP, unused savings shall revert to the City unless otherwise agreed.

1.11 GUARANTEED MAXIMUM PRICE (GMP) REVIEW AND APPROVAL

- A. The DBM will meet with the City to review each GMP Proposal and the written statement of its basis. The DBM shall make adjustments as necessary to clarify or correct inconsistencies.
- B. The City may engage an independent estimator or request review by the DBM Design Team to verify the reasonableness of a GMP Proposal. If differences are

identified, the DBM reconfirm the basis of its GMP Proposal or provide substantiation of the variance within seven (7) Days of the City's request.

- C. If design modifications are required during the GMP review, the City will authorize the DBM Design Team to revise the Construction Documents to align with the agreed-upon assumptions and clarifications. The DBM shall promptly notify the City and DBM Design Team if the revised Construction Documents are inconsistent with the agreed GMP basis.
- D. Upon City approval, the GMP Proposal shall establish the maximum contract price for the scope of work described. The DBM shall deliver the Project for the final approved GMP, subject to adjustments as allowed by this Contract.
- E. If the City does not approve a GMP Proposal, the City may:
 - 1. Accept the GMP Proposal as submitted, if within the budget.
 - 2. Accept the GMP Proposal with adjustments to the City's Project budget, and indicate in writing to the DBM that the Project budget has been increased to fund the differences.
 - 3. Request that the DBM submit a revised GMP Proposal reflecting adjustments to scope, schedule, or assumptions identified by the City.
 - 4. Decline to approve the GMP Proposal, in which case the City may elect not to proceed and may terminate this Contract and elect to not enter into a separate contract with the DBM for the Construction Phase services for that scope of work. In such event, the obligations of this Contract shall conclude at the completion of the preconstruction phase.

1.12 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- A. The DBM is responsible for the selection of all Subcontractors and Suppliers, subject to the City's right of review and approval. This may occur before or after submission of a GMP Proposal. Subcontractors and Suppliers may be selected based on qualifications alone or a combination of qualifications and price. Selection may not be selected based on price alone. The DBM is solely responsible for the performance of the Subcontractors and Suppliers and for coordinating their work.
 - 1. The DBM will prepare and submit to the City for approval a Subcontractor Selection Plan identifying trades proposed for selection by qualifications only as provided in Article 1.12(B) and trades anticipated to be selected by qualifications and competitive pricing as provided in Article 1.12(C). The Subcontractor Selection Plan will also identify any trades not subject to a formalized qualifications-based selection process. The Subcontractor Selection Plan must be consistent with the selection requirements included in this Contract and any applicable laws.

- B. Selection by qualifications only - The City may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications if the DBM demonstrates it is in the best interest of the Project.
1. The DBM will apply the approved Subcontractor Selection Plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation.
 2. The DBM will negotiate costs for services/supplies from the Subcontractors/Suppliers under the approved qualifications only method.
 3. The DBM may elect to comply with the following procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
 - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
 - b. A statement that only unpriced statements of qualifications will be considered; and
 - c. State the requirements for the services/supplies, such as drawings and descriptive literature; and
 - d. State the criteria for evaluating the qualifications; and
 - e. A closing date and time for receipt of a statement of qualifications and the location where the statements should be delivered or mailed; and
 - f. A statement that discussions may be held; and
 - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
 4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
 5. Statements of Qualifications will not be opened publicly, but will be opened in the presence of the DBM. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
 6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable will be in writing, state the basis of the determination and be retained by the DBM. The DBM will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.

7. The DBM may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, the DBM will not disclose any information derived from any other bidder's statement of qualifications.
 8. The DBM will negotiate costs for services/supplies from the Subcontractor/ Supplier selected under this method. Without first giving written notice to the City, no change in the recommended Subcontractors/ Suppliers will be allowed.
- C. Selection by qualifications and competitive bid – The DBM will apply the City's Subcontractor Selection Plan stated above if previously approved by the City in the DBM's evaluation of the qualifications of Subcontractors/Suppliers by providing the City with its process to prequalify prospective Subcontractors/Suppliers. Selection may not be based on price alone. All Work for Subcontractors and Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.12(B) above. The DBM may elect to comply with the following procedures in step 2 of its competitive bid process.
1. The DBM will develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not 3 qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances, the DBM may request approval by the City to submit less than 3 names. Without first giving written notice to the City, no change in the recommended Subcontractors/ Suppliers will be allowed.
 2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the DBM will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
 3. The DBM will distribute Drawings and Specifications, and when appropriate, conduct a Pre-Bid conference with prospective Subcontractors and Suppliers. The DBM will then review the price bids submitted by Subcontractors and Suppliers and make its selection based on the responsive and responsible bidder with the lowest price.
 4. If the DBM desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The DBM's bid will be evaluated in accordance with the process identified in the Invitation for Bids. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule or cost, the DBM may self-perform Work without bidding or re-bidding the Work.
- D. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the DBM will nominate a substitute Subcontractor or Supplier,

preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected.

1. Any higher costs due to the City's rejection and substitution of a DBM's nominated Subcontractor/Supplier or to any self-performed Work will be reflected in the Total GMP. The DBM's proposed GMP for the Work or portion of the Work will be correspondingly adjusted to reflect the higher costs. The City at its sole discretion will either:
 - a. Correspondingly increase the DBM's Total GMP; or
 - b. Correspondingly decrease the City's Project Contingency without change to the DBM's Total GMP.
2. Any lower costs due to the City's rejection and substitution of a DBM's nominated Subcontractor/Supplier or to any self-performed Work will be added to the City's Project Contingency.
3. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve the DBM of its sole responsibility for control over the methods, means and processes by which the Work is accomplished.

1.13 APPROVED ALTERNATES

- A. Plans and Specifications may contain references to equipment or materials (patented or unpatented) or "approved alternate(s)." These references will be regarded as establishing a standard of quality, finish, appearance, performance or as indicating a selection or design based upon compatibility with existing equipment, materials, or details of construction inherent to the Project design. These references will not be construed as limiting the selection to a specified item, source, or design detail. The use of an alternate or substitute item or source as an approved alternate will be permitted, subject to the provisions of this Article 1.13.
- B. The DBM and the Project Manager will evaluate the information submitted, perform tests when necessary and make comparisons in order to approve or reject the proposal. If rejected, the DBM will give notice of rejection to the Bidder submitting the proposal.
- C. The DBM, if the proposal is accepted, will issue a written addendum to the Invitation for Bid specifying the approved alternates and distribute the modification in the same manner as the original bidding documents.
- D. The Specifications may reference equipment or materials "or alternate." The reference to "or alternate" will be construed to mean "or approved alternate" in every instance. Use of an alternate or substitute item will be allowed only if approval was received as outlined in this Article.
- E. Construction Documents references to equipment, materials, patented processes by manufacturer, trade name, make, or catalog number may be permitted, unless

indicated that no substitutes or alternates may be permitted, subject to the following:

1. The DBM will 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. The submittal will state any required changes in the Construction Documents to adapt the design to the proposed substitution.
3. The submittal will contain an itemized estimate of all costs and credits that will result directly or indirectly from the acceptance of the substitution including cost of design, license fees, royalties, and testing. The submittal will also include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

ARTICLE 2 - PERIOD OF SERVICES

- 2.0** The DBM will perform preconstruction and design phase services in this Contract in accordance with the terms and conditions of Article 1, Exhibit A - paragraph 3, and the most current update/revised Project Schedule. Failure on the part of the DBM to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 2.1** If the date of performance of any obligation or the last day of any time period provided for falls on a Saturday, Sunday, or holiday for the City, then the obligation will be due and owing, and the time period will expire, on the first day next which is not a Saturday, Sunday or City holiday. Unless an exception is provided in this Contract, any performance required will be timely made if completed no later than 5:00 p.m. (Local time) on the day of performance.

ARTICLE 3 - CONTRACT AMOUNT AND PAYMENTS

3.0 CONTRACT AMOUNT

Based on the preconstruction phase services fee proposal submitted by the DBM and accepted by the City (which by reference is made a part of this Contract); the City will pay the DBM a fee not to exceed \$180,230 as follows:

For the basic services described in Article 1, the DBM will receive a fee not to exceed..... \$130,230

Breakdown of these tasks include:

3.1 Schematic Design/Site Investigations.....	\$36,870
3.2 Design Development.....	\$37,880
3.3 Construction Documents/GMP.....	\$55,480
3.4 Additional Design Services and Allowance.....	\$50,000
TOTAL CONTRACT AMOUNT, not to exceed.....	\$180,230

3.1 PAYMENTS

- A. Requests for monthly payments by the DBM will be submitted to the Project Manager on the City's "Payment Request" form and will be accompanied by a progress report, detailed invoices, and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subcontractors' requests for payment, plus similar narratives and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum will be made in accordance with the percentage of Work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
- B. The fees for the DBM and any Subcontractors will be based upon the hourly rate schedule included as Exhibit B attached, and by reference made a part of this Contract.
- C. The DBM agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Any delays or hindrances will be solely compensated for by an extension of time for a reasonable period as may be mutually agreed between the parties. It is agreed, however, that permitting the DBM to proceed to complete any services, in whole or in part, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.
- D. If any service(s) executed by the DBM is abandoned or suspended in whole or in part, for a period of more than 90 days through no fault of the DBM, the DBM is to be paid for the services performed before the abandonment or suspension. If the City suspends the Work for 91 consecutive days or more, the suspension will be a Contract termination for convenience.
- E. The DBM acknowledges and agrees that compensation under this section is solely for preconstruction phase services. No construction, procurement of construction materials, or other construction-related activities are authorized under this Contract unless and until a separate construction contract or amendment with the DBM for construction phase services is executed by the parties.

ARTICLE 4 - CITY'S RESPONSIBILITIES

4.0 The City, at no cost to the DBM, will furnish the following information:

- A. One copy of data the City determines is pertinent to the Work. However, the DBM will be responsible for searching the records and requesting information it considers reasonably required for the Project.
- B. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

- C. The name of the City employee or City's representative who will serve as the Capital Programs Manager during the term of this Contract is stated in Article 5.12(A). The Capital Programs Manager has the authority to administer this Contract and will monitor the DBM's compliance with all terms and conditions stated in this Contract. The City Project Manager will manage the execution of the Work associated with this Contract. All requests for information from or decisions by the City on any aspect of the Work or Deliverables will be directed to the Project Manager. The Project Manager will provide the DBM with prompt notice if the Project Manager observes any failure on the part of the DBM to fulfill its contractual obligations, including any default or defect in the Project or non-compliance with the drawings or specifications.

4.1 The City additionally will:

- A. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the DBM.
- B. Provide the DBM with adequate information in its possession or control regarding the City's requirements for the Project.
- C. Give prompt written notice to the DBM when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.
- D. Notify the DBM of changes affecting the budget allocations.

4.2 The City's Capital Programs Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Capital Programs Manager considers appropriate to the DBM.

ARTICLE 5 - CONTRACT CONDITIONS

5.0 PROJECT DOCUMENTS AND COPYRIGHTS

- A. City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original Mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the DBM; provided, however, the DBM is entitled to retain one record copy of all documents. But in the event these Project Documents are altered, modified or adapted without the written consent of the DBM, which consent the DBM will not unreasonably withhold, the City agrees to hold the DBM harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of the Project Documents.
- B. DBM to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship pre-existing to this Contract or developed or created by the DBM, DBM Design Team, Subcontractors or

personnel, during the course of performing this Contract or arising out of the Project will belong to the DBM.

- C. License to City for Reasonable Use: The DBM grants and will require its Subcontractors to grant a license to the City, and its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works, subject to the hold harmless provisions described above. In the event that the derivative works require the City to alter or modify the Project Documents, then Article 6.1(A) applies.
- D. Documents to Bear Seal: When applicable and required by state law, the DBM and its Subcontractors will endorse, by an Arizona professional seal, all plans, works, and Deliverables prepared by them for this Contract, if any.

5.1 COMPLETENESS AND ACCURACY OF DBM'S WORK

The DBM will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and all other preconstruction phase Deliverables prepared or compiled in accordance with its obligations under this Contract and will at its sole expense correct its Work or Deliverables. The fact that the City has accepted or approved the DBM's Work or Deliverables will in no way relieve the DBM of any of its responsibilities under this Contract, nor does this requirement to correct the Work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City.

5.2 ALTERATION IN CHARACTER OF WORK

- A. In the event an alteration or modification in the character of the Work or Deliverable results in a substantial change in this Contract, materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will be performed as directed by the City. But before any altered or modified Work begins, a Change Order or Amendment will be approved and executed by the City and the DBM. This Change Order or Amendment will not be effective until approved by the City.
- B. Additions to, modifications of, or deletions from the Project provided in this Contract may be made, and the compensation to be paid to the DBM may accordingly be adjusted by mutual agreement of the contracting parties.
- C. No claim for extra Work done or materials furnished by the DBM will be allowed by the City except as provided in this Contract, nor will the DBM do any Work or furnish any material(s) not covered by this Contract unless the Work or material is first authorized in writing. Work or material(s) furnished by the DBM without first obtaining written authorization will be at the DBM's sole responsibility, cost, and expense, and the DBM agrees that without first obtaining written authorization, no claim for compensation for the Work or materials furnished will be made.

5.3 DATA CONFIDENTIALITY

- A. As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, Samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the DBM or others in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the DBM in connection with the DBM's performance of this Contract are confidential and proprietary information belonging to the City.
- C. Except for Subcontractors, material and equipment Suppliers, consultants or other like parties necessary to complete the Work or as required by the City, the DBM will not divulge data to any third party without first obtaining the written consent of the City. The DBM will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 1. Data which is or becomes publicly available other than as a result of a violation of this Contract;
 - 2. Data which was in the DBM's possession legally and without restriction before its performance under this Contract;
 - 3. Data which was acquired by the DBM in its performance under this Contract and which was disclosed to the DBM by a third party, who to the best of the DBM's knowledge and belief, had the legal right to make the disclosure and the DBM is not otherwise required to hold the data in confidence; or
 - 4. Data which is required to be disclosed by the DBM by virtue of law, regulation, or court.
- D. In the event the DBM is required or requested to disclose data to a third party, or any other information to which the DBM became privy as a result of any other Contract with the City, the DBM will first notify the City, as provided in this Article, of the request or demand for the data. The DBM will timely give the City sufficient facts, so that the City can have a meaningful opportunity to either give its consent or take any action that the City may consider appropriate to protect the data or other information from disclosure.
- E. The DBM, unless prohibited by law, will promptly deliver, as stated in this Article, a copy of all data in its possession and control to the City within ten (10) Days after completion of services. All data will continue to be subject to the confidentiality provisions of this Contract.
- F. The DBM assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this

Article are violated by the DBM, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

5.4 PROJECT STAFFING

- A. Before the start of any Work or Deliverables under this Contract, the DBM will submit to the City an organization chart for the DBM staff and Subcontractors and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or any revisions), who will be involved in performing the services described in this Contract. Unless otherwise informed, the City acknowledges its acceptance of personnel to perform these services under this Contract. In the event the DBM desires to change any key personnel from performing the services under this Contract, the DBM will first submit the qualifications of the proposed substituted personnel to the City for approval. Key personnel will include, but are not limited to, principal in charge, project manager, superintendent, project director, or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning. The City will approve all key personnel, and approval shall not be unreasonably withheld.
- B. The DBM will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of work described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the DBM's staff, the DBM will take prompt corrective action acceptable to the City and, if required, remove the personnel from the Project and replace or add with new personnel acceptable to the City.

5.5 INDEPENDENT CONTRACTOR

The DBM is and will be an independent contractor and not an employee or agent of the City and whatever measure of control the City exercises over the Work or Deliverables will be as to the results of the Work only. No provision in this Contract will give or be construed to give the City the right to direct the DBM as to the details of accomplishing the Work or Deliverables. DBM's performance of the Work of this Contract will be in accordance with all applicable laws and ordinances.

5.6 TERMINATION AND CANCELLATION

- A. The City has the right to terminate or cancel this Contract or abandon any portion of the Project for which services have not been performed by the DBM.
- B. Termination for Convenience: The City reserves the right to terminate this Contract or any part of it for its sole convenience with 30 Days' written notice. In the event of termination, the DBM will immediately stop all Work, and will immediately cause any of its Suppliers and Subcontractors to cease Work. Upon termination, the DBM will deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, and other Work and

Deliverables entirely or partially completed, together with all unused materials supplied by the City. The DBM will appraise the Work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the DBM's Work or Deliverables to appraise the Work completed. As compensation in full for services performed to the date of the termination, the DBM will receive its fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by the DBM and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Project Manager will determine the percentage of completion of each task detailed in the Scope of Work and the DBM's compensation will be based upon this determination. The City will make this final payment within 60 Days after the DBM has delivered the last of the partially completed items. The DBM will not be paid for any Work done after receipt of the notice of termination, nor for any costs incurred by the DBM's Suppliers or Subcontractors, which the DBM could reasonably have avoided.

- C. Cancellation for Cause: The City may also cancel this Contract or any part of it by first giving 7 Days' written notice for cause in the event of any default by the DBM, or if the DBM fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance despite a reasonable opportunity to cure, as judged by the Project Manager, and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the DBM will be entitled to amounts due and owing under this Contract for Work performed, but will also be liable to the City for any and all damages available under this Contract sustained by reason of the default, which gave rise to the cancellation.

In the event the DBM is in violation of any applicable Federal, State, County or City law, regulation or ordinance, the City may cancel this Contract immediately upon giving notice and an opportunity to cure to the DBM.

In the event the City cancels this Contract or any part of the services contracted for, the City will notify the DBM in writing, and immediately upon receiving this notice, the DBM will discontinue advancing the Work under this Contract and proceed to close all operations, and the expenditure, if any, of costs resulting from the abandonment or cancellation. Upon termination, or cancellation or abandonment, and with the exception of one record copy the DBM may retain, the DBM will deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility. If through any cause, the DBM fails to fulfill in a timely and proper manner its obligations under this Contract, or if the DBM violates any of the covenants, contracts, or stipulations of this Contract, the City may withhold any payments to the DBM for the purpose of setoff until the exact amount of damages due the City from the DBM is determined by the parties or by a court of competent jurisdiction.

- D. The City and the DBM agree to the full performance of the covenants contained in this Contract, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the DBM.

- E. The DBM, upon termination, cancellation, or abandonment, will promptly deliver to the City all reports, estimates and other Work or Deliverables entirely or partially completed, together with all unused materials supplied by the City.
- F. The DBM will appraise the Work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the DBM's Work or Deliverables to appraise the Work completed.
- G. The DBM will receive compensation in full for services satisfactorily performed to the date of termination or cancellation. The fee will be paid in accordance with Article 3.0 of this Contract, and will be an amount mutually agreed upon by the DBM and the City. If there is no mutual agreement, the final determination will be made in accordance with Article 5.8, "Disputes." However, in no event will the fee exceed that stated in Article 3 or as amended in accordance with Article 5.2, "Alteration in Character of Work." The City will make the final payment within 60 Days after the DBM has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.
- H. If the City improperly cancels this Contract for cause, the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of Article 5.6 (B).

5.7 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for Contract charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to the DBM at least 30 Days before the end of its current fiscal period and will pay the DBM for all approved charges incurred through the end of the period.

5.8 DISPUTES

In any unresolved dispute arising out of an interpretation of this Contract or the duties required under this Contract, the final determination at the administrative level will be made by the Project Manager.

5.9 WITHHOLDING PAYMENT

The City, in compliance with Title 34 of the Arizona Revised Statutes, reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the DBM, until such time as a settlement on those claims has been reached.

5.10 RECORDS/AUDIT

- A. Records of the DBM's direct personnel payroll, reimbursable expenses related to this Project and records of accounts between the City and the DBM will be kept on a generally recognized accounting basis. The City, its authorized representative, or the appropriate federal agency, reserve the right to audit the DBM's records to verify the accuracy and appropriateness of all pricing data, including data used to

negotiate this Contract and any Change Orders. The City reserves the right to decrease the Contract Amount or payments made on this Contract if, upon audit of the DBM's records, the audit discloses the DBM has provided false, misleading, or inaccurate cost and pricing data. If an audit in accordance with this Article, discloses overcharges, of any nature, by the DBM to the City in excess of 1% of the total Contract billings, the actual cost of the City's audit will be reimbursed to the City by the DBM. Any adjustments or payments which must be made as a result of any audit or inspection of the DBM's invoices or records will be made within a reasonable amount of time (not to exceed 90 Days) from presentation of the City's findings to the DBM.

- B. The DBM and Subcontractors (in a GMP) agree to retain all financial and non-financial books, records, electronic files and other documents relative to this Project for a minimum of five (5) years after final payment.
 - 1. Electronic files shall mean the following:
 - a. Native file for the following file types:
 - b. Word Processing (such as MS Word)
 - c. Spreadsheets (such as MS Excel)
 - d. PowerPoint
 - e. CAD files
 - f. Schedule Files (such as Primavera, SurTrak, MS Project, Etc.)
 - 2. In the event that the software being used is not included in the types listed above, the next level of electronic files shall mean an export of the data to a text file or other similar parsable file format. This requirement will be upheld if the software is capable of export even if the DBM is unfamiliar with the exporting process.
 - 3. In the event that the software being used is incapable of exporting data, the next level of electronic files shall mean a print of the data or report directly into PDF. A scanned print saved to PDF is not the same as a file printed directly to PDF.
- C. A scanned copy of data will be acceptable only in the event that none of the file options exist as stated above. Scanned data will also be acceptable as the record copies to show signatures.
- D. The DBM will include a provision similar to this Article 5.10 in all of its Contracts with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease the Contract Amount or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- E. This audit provision includes the right to inspect personnel records as required by Article 7.0.

5.11 INDEMNIFICATION

To the fullest extent permitted by law, the DBM, its successors, assigns and guarantors, upon the assertion of a claim, will defend, indemnify and hold harmless Lake Havasu City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any negligence, recklessness, or intentional wrongful conduct to the extent caused by the DBM or any of its owners, officers, directors, agents, employees directing, supervising or performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including without limitation any injury or damages by any of the DBM employees. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of the DBM to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by the DBM from and against any and all asserted claims. It is agreed that the DBM will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the DBM agrees to waive, and cause its insurers to waive, all rights of subrogation against the City, its officials, officers, agents, and employees for losses arising from the performance under this Contract by the DBM, any of its owners, officers, directors, agents, employees, any Subcontractor and anyone for whose acts any of them may be liable.

Insurance provisions stated in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Article will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions, and shall survive the termination of this Contract.

5.12 NOTICES

- A. Unless otherwise provided in this Contract, demands under this Contract will be in writing and will be considered to have been properly given and received either (1) on the date of service if personally served on the party to whom notice is to be given, or (2) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	Lake Havasu City 2330 McCulloch Boulevard North Lake Havasu City, Arizona 86403 Attn: City Manager
With a copy to:	Attn: Administrative Services Department, Procurement Division 2330 McCulloch Boulevard North Lake Havasu City, Arizona 86403
With a copy to Capital Programs Manager:	Attn: Public Works Capital Programs Manager 900 London Bridge Road Lake Havasu City, Arizona 86404
To DBM:	Concord General Contracting Inc. 2240 W. Broadway Rd., Suite 105 Mesa, AZ 85202

Notice by facsimile or electronic (e-mail) will not be considered adequate notice as required in this Contract.

5.13 INTELLECTUAL PROPERTY

- A. The DBM will pay all royalties and license fees associated with its performance of services under this Contract.
- B. The DBM will defend any action or proceeding brought against the City based on any claim that the Work, or any part of it, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, issued now or at some later date. The City will give prompt written notice to the DBM of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. The DBM will defend, indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or the DBM in any action or proceeding. The DBM agrees to keep the City informed of all developments in the defense of the actions. The City may be represented by, and actively participate through its own counsel in any suit or proceedings if it so desires.
- C. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, the DBM will at its sole expense take reasonable steps to procure the right to operate or use the Work. If the DBM cannot procure this right within a reasonable time, the DBM will promptly, at the DBM's option and at the DBM's expense, (a) modify the Work so as to avoid infringement of any patent or copyright or (b) replace the Work with Work that does not infringe or violate any patent or copyright.
- D. Articles 5.13 (2) and 5.13 (3) above will not be applicable to the extent any suit, claim or proceeding based on infringement or violation of a patent or copyright (a) relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by the DBM to the City or (b) arising from modifications to the Work by the City or its agents after acceptance

of the Work, or (c) relating to the copyrights of any specification, drawing, or any Design documents provided by the City, the DBM Design Team, any consultant retained by the City, or by a Subcontractor or Supplier.

- E. The obligations stated in this Article 5.13 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

5.14 CONFLICT OF INTEREST

- A. To evaluate and avoid potential conflicts of interest, the DBM will provide written notice to the City, as stated in this Article, of any Work or services performed by the DBM for third parties that may involve or be associated with any real property or personal property owned or leased by the City. This notice will be given 7 business days before the start of the Project by the DBM for a third party or 7 business days before an adverse action as defined below. Written notice and disclosure will be sent to the Capital Programs Manager identified in Article 5.12(A).
- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
 - 1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 - 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
 - 3. Using data to produce income for the DBM or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. The DBM represents that except for those persons, entities and projects identified to the City, the services to be performed by the DBM under this Contract are not expected to create an interest with any person, entity or third party project that is or may be adverse to the interests of the City.
- D. The DBM's failure to provide a written notice and disclosure of the information as stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.

5.15 CONTRACTOR'S LICENSE

Before any award of this Contract, the DBM must provide to the City, its contractor's license classification and number and its Federal Tax I.D. number and Federal W-9 Form.

5.16 SUCCESSORS AND ASSIGNS

This Contract will extend to and be binding upon the DBM, its successors and assigns, including any individual, company, partnership, or other entity with or into which the DBM will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other

entity to which the DBM will sell its assets. No right covered by this Contract will be assigned in whole or in part without first obtaining the written consent of the City. In no event will any contractual relationship be created or be construed to be created as between any third party and the City.

5.17 FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not limited to, acts of God, riots, acts of war, epidemics, labor disputes not arising out of the actions of the DBM, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

5.18 TAXES AND INDEMNIFICATION

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type. DBM and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the DBM, except as may be otherwise provided in this Contract. The DBM shall, and require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Workers' Compensation.

5.19 NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract will not be construed to be a waiver of these provisions, nor will it affect the validity of this Contract or any part of it, or the right of either party to enforce each and every provision.

5.20 JURISDICTION

This Contract will be considered to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions. An action to enforce any provision of this Contract or to obtain any remedy will be brought in the Superior Court, Mohave County, Arizona. Such action must be filed, tried and remain in this Court for any and all proceedings. For this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court, and the DBM hereby waives the right to have such action removed to Federal District Court.

5.21 SURVIVAL

All warranties, representations and indemnifications by the DBM will survive the completion or termination of this Contract.

5.22 MODIFICATION

Any amendment, modification, or variation from the terms of this Contract will be in writing and will be effective only after approval of all parties signing the original Contract.

5.23 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted. In accordance with the provisions of ARS § 41-194.01, should the Attorney General give notice to the City that any provisions of this Contract violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract and the City and the DBM shall, within 10 Days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

5.24 INTEGRATION

This Contract constitutes the entire understanding of the parties and no representations or contracts, oral or written, made before its execution will vary or modify its terms.

5.25 TIME IS OF THE ESSENCE

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

5.26 THIRD PARTY BENEFICIARY

All duties and responsibilities undertaken in compliance with this Contract are for the sole and exclusive benefit of the City and the DBM and not for the benefit of any other party.

5.27 COOPERATION AND FURTHER DOCUMENTATION

The DBM agrees to provide the City any other properly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

5.28 CONFLICT IN LANGUAGE

The performance of all Work or Deliverables will conform to all applicable Lake Havasu City codes, ordinances and requirements as outlined in this Contract and consistent with the Scope of Work described herein. If there is a conflict in interpretation between provisions in this Contract, the following order of precedence shall govern:

1. Contract Terms
2. Exhibits A, B and C
3. Request for Statement of Qualifications (RFSQ), including addenda
4. DBM's proposal to the RFSQ dated August 27, 2025

5.29 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 of default, the prevailing party will be entitled to receive from the other party reasonable attorney's fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to

have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

5.30 HEADINGS

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

5.31 CITY'S RIGHT OF CANCELLATION

All parties to this Contract acknowledge that this Contract is subject to cancellation by Lake Havasu City as provided by the provisions of Section 38-511, Arizona Revised Statutes.

ARTICLE 6 - INSURANCE

6.0 INSURANCE REQUIREMENTS

- A. Concurrently with the execution of this Contract, the DBM must furnish the City a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona, or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- B. The DBM, Subcontractors and Subconsultants must procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by the DBM, his agents, representatives, employees, or Subcontractors.
- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect the DBM from liabilities that might arise out of the performance of the services contracted for under this Contract by the DBM, their agents, representatives, employees, Subcontractors or Subconsultants and the DBM is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if the DBM pays for insurance with higher limits, the DBM will name the City as an additional insured on any of this insurance.
- E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the Effective Date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the Effective Date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through

purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- F. Self-Insured Retentions. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

6.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

The DBM must provide coverage at least as broad and with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$4,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expense (Any one person)	Optional

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

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

C. Workers' Compensation and Employers Liability

Workers' Compensation Statutory	
Employers Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$1,000,000

D. Coverage Terms and Required Endorsements

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: Lake Havasu City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the DBM including; Products and Completed operations of the DBM; and automobiles owned, leased, hired, or borrowed by the DBM.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the DBM even if those limits of liability are in excess of those required by this Contract.
3. The DBM's insurance coverage, including any excess insurance policies, must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by

the City, its officers, officials, agents, and employees must be in excess of the coverage provided by the DBM and must not contribute to it.

4. The DBM's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage provided by the DBM must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the DBM for the City.
7. The DBM, its successors or assigns, is required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The DBM must submit Certificates of Insurance evidencing the Commercial General Liability insurance during this 3-year period containing all the insurance requirements stated in this Contract including naming Lake Havasu City, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
8. Workers' Compensation and Employers Liability Coverage: The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by the DBM for the City.
9. If the DBM receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be DBM's responsibility to provide prompt notice to the City, unless such coverage is immediately replaced with similar policies.

6.2 OTHER INSURANCE REQUIREMENTS

- A. Contractors Professional Liability: The DBM must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of the DBM.
- B. Contractors Professional Limits of Liability: The DBM must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. The DBM, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the 3-year period.
 1. The DBM's insurance coverage including any excess insurance must be primary insurance over any self-insurance maintained by the City. It is also

agreed that any insurance or self-insurance coverage of the City is secondary to DBM's coverage and will not contribute to it.

2. ***Lake Havasu City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the DBM.***

C. Contractor's Pollution Liability: The DBM must carry limits of \$1,000,000 each occurrence and \$2,000,000 in the Aggregate.

1. The policy shall provide coverage for damages against, but not limited to, bodily injury, third-party liability, clean up, corrective action including assessment, remediation and defense costs. When a self-insured retention or deductible exceeds \$25,000, Lake Havasu City reserves the right, but not the obligation, to review and request a copy of the DBM's most recent annual report or audited financial statements.
2. The pollution liability policy shall be endorsed to include the following additional insured language: ***"Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the DBM."***
3. In the event that the pollution liability insurance required by this Contract is written on a claims-made basis, DBM warrants that any retroactive date under the policy shall precede the effective date of this CONTRACT; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of seven (7) years beginning at the time work under this Contract is completed.

6.3 NOTICE OF CANCELLATION

If the DBM receives notice that any of the required policies of insurance are materially reduced with respect to the minimum limits required under this Contract. It will be DBM's responsibility to provide prompt notice to the City, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, except after first giving 30 Days written notice, by certified mail, return receipt requested to: Attention: Administrative Services Department, Procurement Division, 2330 McCulloch Boulevard N., Lake Havasu City, AZ 86403.

6.4 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers properly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than A-. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the DBM from potential insurer insolvency.

6.5 VERIFICATION OF COVERAGE

- A. The DBM must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages must be clearly noted on the Certificate of Insurance.
- B. All certificates and endorsements are to be received and approved by the City before Work commences except for Builder's Risk Insurance. Each insurance policy required by this Contract must be in effect on or before the earlier of the start of Work under the Contract Documents or the signing of this Contract except for Builder's Risk Insurance which must be in effect before the start of Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All Certificates of Insurance required by this Contract must be sent directly to Attention: Administrative Services Department, Procurement Division, 2330 McCulloch Boulevard N., Lake Havasu City, AZ 86403. The Project number and Project description must be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

6.6 APPROVAL

Any modification or variation from the insurance requirements in this Contract must be approved by Lake Havasu City Human Resources (Risk Management) Department, whose decision will be final. Any modification or variation will not require a formal contract amendment, but may be made by administrative action.

6.7 EFFECTIVE DATE

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

ARTICLE 7 - FEDERAL AND STATE LAW

7.0 COMPLIANCE WITH FEDERAL AND STATE LAWS

The DBM understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The DBM agrees that the performance of its Work will be in accord with these laws and to permit the City to verify compliance. The DBM will also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees." The DBM will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. § 41-4401, the DBM warrants to the City that the DBM and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the DBM and all its subcontractors now comply with the E-Verify Program under A.R.S. § 23-214(A).

A breach of this warranty by the DBM or any of its subcontractors will be considered a material breach of this Contract and may subject the DBM or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the DBM or any subcontractor who works on this Contract to ensure that the DBM or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the DBM and any of its subcontractors to ensure compliance with this warranty. The DBM agrees to indemnify, defend, and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes related to the performance of the Work.

The City will not consider the DBM or any of its subcontractors in material breach of this Contract if the DBM and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the DBM enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The DBM will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The DBM's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

7.1 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract the DBM will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex, or national origin. The DBM will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight. The DBM will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 DBM 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.

The DBM will, in all solicitations or advertisements for employees placed by or on behalf of the DBM, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

7.2 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity, or national origin.

7.3 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

DBM acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. DBM shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation; provided, however, that DBM shall not be responsible for violations that occur based on the drawings, specifications, or other Design Documents provided by the City, or the City's consultants. DBM agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of DBM, its employees, agents, or assigns will constitute a material breach of this Contract.

7.4 NO BOYCOTT OF ISRAEL

If applicable, DBM certifies that it is not currently engaged in and agrees for the duration of the Contract to not engage in a boycott of goods and services from Israel, as defined in A.R.S. § 35-393.

7.5 FORCED LABOR OF ETHNIC UYGHURS CERTIFICATION

DBM certifies that it does not currently, and agrees for the duration of the Contract that it will not, use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If DBM becomes aware it is not in compliance with this certification, it shall notify the City within five business days after becoming aware. This Contract will terminate upon failure to remedy the noncompliance within 180 Days of the notification. (A.R.S. § 35-394)

ARTICLE 8 - TERMS AND DEFINITIONS

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

Allowance - means an agreed amount by the City and the DBM for items which may be required to complete the scope of work.

Alternate Systems Evaluations - Alternatives for design, means, and methods or other scope of work considerations that are evaluated using value engineering principles and have the potential

to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order - A written order signed by an authorized representative of the City and DBM and which approves changes in the total compensation or time allowed for completion of services consistent with Lake Havasu City Code 3.10.020.6, Contract Amendments.

City ("Owner") - means Lake Havasu City, an Arizona municipal corporation. Regulatory activities handled by Lake Havasu City Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

City's Project Contingency - means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from the City's direct changes or unforeseen site conditions. The amount of the City's Project Contingency may be set solely by the City and will be in addition to the project costs included in the DBM's GMP package. The City's Project Contingency is an amount to cover changes initiated by the City, which may be incorporated into the GMP as an Allowance at the City's discretion.

Construction Documents - The plans, specifications, and drawings prepared by the DBM Design Team after correcting for permit review requirements and incorporating Addenda and approved Change Orders, and the Preconstruction Contract and the DBM Construction Contract.

Contract ("Contract") - This written document signed by the City and the DBM covering the preconstruction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

Contract Amount - The final approved not-to-exceed budget for this Contract as identified in Article 3.0.

Contract Documents - means the following items and documents in descending order of precedence executed by the City and the DBM: (i) all written modifications, Addenda, and Change Orders; (ii) the DBM Construction Contract; (iii) this Preconstruction Contract, including all exhibits and attachments; (iv) written Supplementary Conditions; (v) Construction Documents; (vi) GMP Plans and Specifications.

Capital Programs Manager - means the person designated in Article 5.12.

Contract Time(s) - The number of days or the dates related to the contract time for the Preconstruction Phase Services Contract.

Cost of the Work - The direct costs necessarily incurred by the DBM in the proper performance of the Work. The Cost of the Work must include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, whether provided by DBM or a third party, materials testing, and warranty work together with self-performed work that the DBM established in the Sub-Contractor Selection Plan. The Cost of the Work will not include the general conditions, DBM's construction fee, taxes, bonds, or insurance costs.

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

Deliverables - The work products prepared by the DBM in performing the Scope of Work described in this Contract. Major Deliverables to be prepared and provided by the DBM during

the preconstruction phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

DBM ("Design-Build Manager") – The person, firm, corporation, or other approved legal entity with which the City has entered into this Contract.

DBM Design Team - refers to licensed design professionals that have been selected to work on a team composed of Design Professionals and a Contractor. The DBM Design Team has a services contract to furnish design and may or may not provide professional inspections for the Project. The DBM Design Team is led by Concord General Contracting, an Arizona corporation.

Design-Build – means a project delivery method in which:

- A. There is a single contract for Design Services and construction services, except that instead of a single contract for Design Services and construction services, the agent may elect separate contracts for Preconstruction Services and Design Services during the design phase, for construction and Design Services during the construction phase and for any other construction services.
- B. Design and construction of the project may be either:
 - 1. Sequential with the entire design complete before construction commences.
 - 2. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
- C. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Design Services – means all professional services to be performed or procured by the DBM to provide the required Project design under this Contract and any subsequent amendments.

Drawings (Plans) - Documents which visually represent the scope, extent, and character of the Work to be furnished and performed by the DBM during the construction phase and which have been prepared or approved by the DBM Design Team and the City. Drawings include documents that have reached a sufficient stage of completion and released by the DBM Design Team solely for the purposes of review or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%), but *"not for construction"*. Drawings do not include shop drawings.

Effective Date of this Contract - The date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the City executes this Contract.

General Conditions Costs - The negotiated amount of project supervision and other Indirect Costs according to construction terms. These costs are not reflected in other GMP items. Costs may include, but are not limited to, the following: Project Manager, Superintendent, Full-time General

Foremen, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.) and administrative office personnel. Other costs may include: temporary office, fencing and other facilities, office supplies, office equipment, minor expenses, utilities, vehicles, fuel, sanitary facilities, and telephone services at the site.

GMP Plans and Specifications - The plans and specifications provided in accordance with Article 1.9 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price or "GMP" - means the sum of the maximum price of the Work as given in the GMP proposal; the DBM's Direct Costs including the Subcontractor Costs of Work and the DBM's Cost of Work, the DBM Indirect Costs including the DBM's Construction Fee; General Conditions, Taxes, Payment and Performance Bonds, Insurance Costs, and City's Project Contingency as more fully described in Article 1.9 of this Contract.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the DBM submitted on the prescribed form stating the GMP prices for the entire Work (which includes Cost of the Work, General Conditions, Taxes, Bonds, Insurance) or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed in compliance with Article 1.9 of this Contract.

Indirect Costs - include the General Conditions, Payment and Performance Bonds, Insurance and Taxes.

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

Notice to Proceed (NTP) - A written notice given by the City to the DBM fixing the date on which the DBM will start to perform the DBM's obligations under the Preconstruction Services Contract.

Payment Request - The form that is accepted by the City and used by the DBM in requesting progress payments or final payment and which will include any supporting documentation as is required by the Contract Documents or the City, and is based on a monthly estimate of the dollar value of the Work completed.

Preconstruction Services - means advice given during the preconstruction phase. Preconstruction Services will be contracted for between the City and the DBM, as required by A.R.S. § 34-603(E). Services may include the following: design review, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, GMP preparation, and subcontractor bid phase services.

Project - The Scope of Work as described in Exhibit A, attached and by reference made a part of this Contract.

Project Manager - means the person designated by the City to manage the execution of the work associated with this project.

Project Team - Preconstruction phase services team consisting of the DBM Design Team, the DBM, the Project Manager, the City's representatives and other stakeholders who are responsible for making decisions regarding the Project.

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

Schedule of Values (SOV) - means the Document specified in the construction phase, which divides the Contract Price into pay items, so that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

Shop Drawings - means drawings, diagrams, schedules and other data specially prepared for the Work by the DBM or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

Site - means the land or premises on which the Project is located generally described as located 100 Park Ave, Lake Havasu City, Arizona, 86403. The DBM will include in its contract with subcontractors the street or physical address of the construction site.

Specifications - The section(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 applicable administrative details.

Subcontractor - means any person or entity retained by the DBM as an independent contractor to perform a portion of the Work and must include material, workers, and suppliers. All subcontractors must be selected in accordance with the selection plan stated in Article 1.12.

Subconsultant - A person, firm, or corporation having a Contract with the DBM to furnish services required as its independent professional associate or consultant with respect to the Project.

Substantial Completion - When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion of the Project for its intended purposes. This may include, but is not limited to: (a) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (b) issuance of elevator permit; (c) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (d) installation of all materials and equipment; (e) City review and acceptance of all systems; (f) City review and acceptance of draft O&M manuals and record documents; (g) City operation and maintenance training completed; (h) HVAC test and balance completed [provide minimum 30 Days before the projected substantial completion]; (i) completed landscaping and Site work; and (j) final cleaning.

Supplier - A manufacturer, fabricator, supplier, distributor, material men or vendor having a direct contract with the DBM or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by the DBM or any Subcontractor.

Work - The entire completed construction or the various separately identifiable parts of the construction, 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.

(SIGNATURES ON NEXT PAGE)

DESIGN-BUILD MANAGER:
Concord General Contracting, Inc.

Greene Martacho, CEO

LAKE HAVASU CITY,
an Arizona municipal corporation

Jess Knudson, City Manager

APPROVED AS TO FORM:

Kelly Garry, City Attorney

**EXHIBIT A
SCOPE OF WORK**

1. Project Services. DBM agrees to:

1.1. Schematic Design/Site Investigation (Task 1)

- 1.1.1. Correspond and coordinate with City in establishing a conceptual scope of work for design and to receive a full description of the desired water feature size, shape, components, effects, and performance. The City and DBM will identify an acceptable time frame by which the DBM will provide the conceptual scope of work for design.
- 1.1.2. Develop the design towards Schematic Design level utilizing the City approved conceptual design. Schematic level design includes showing the location, design, and sizes of proposed water features, design components, as well as showing the proposed location of the equipment enclosure relative to the other features.
- 1.1.3. Comment on materials, equipment, and dimensions for potential effects on maintenance, cost, and code requirements.
- 1.1.4. Provide a Geotechnical report/study of site.
- 1.1.5. Provide Equipment and Chemical room requirements; Preliminary room dimensions, site location, equipment layout in proposed room.
- 1.1.6. Conduct reviews of:
 - 1.1.6.1. Health Codes; Lake Havasu City, Mohave County, and Arizona Department of Environmental Quality.
 - 1.1.6.2. ADA/ABA Titles II and III.
 - 1.1.6.3. Applicable Swim Federation Design Guidelines.
 - 1.1.6.4. Building Codes; Lake Havasu City and Mohave County, as applicable. Currently City applies the 2018 codes, but adoption of 2024 I-Codes is effective on 2/1/2026.
 - 1.1.6.5. ISPSC, MAHC, and VGB.

1.2. Design Development (Task 2)

- 1.2.1. Correspond and coordinate with City in establishing the water feature scope of work with the rest of the DBM Design Team and addressing health code related design issues.
- 1.2.2. Develop the design and details to a Design Development level utilizing the City approved progress design. This includes providing initial sizing of equipment, showing the major components and elements of the design, providing a layout of equipment within the equipment enclosure, and showing general pipe routing.
- 1.2.3. Develop concepts for providing desired water feature effects and components.
- 1.2.4. Establish water treatment and performance criteria for DBM Design Team and City understanding.
- 1.2.5. Develop water feature mechanical systems and underwater lighting system designs, with comment on construction and materials.
- 1.2.6. Comment on design development including materials, equipment, and

dimensions for potential effects on maintenance, cost, and code requirements.

- 1.2.7. Provide one (1) set of design development drawings and specifications. The drawings will be created in AutoCAD and will be printed on bond paper and/or provided in PDF format files as requested.
- 1.2.8. Provide dimensioned plan view, including: Layout of Pool, Deck Equipment, Equipment Room and/or Area, and Perimeter Barrier Fence and Gates.
- 1.2.9. Provide exterior lighting design for the pool deck and surrounding areas. The design shall demonstrate compliance with all applicable codes and standards for egress illumination.
- 1.2.10. Provide preliminary detail sheets for all key components of pool design.
- 1.2.11. Provide preliminary written technical specifications.

1.3. Construction Documents/GMP

- 1.3.1. Upon City's approval of the water feature design development, or as directed by the City, DBM Design Team will further develop the design to a construction document level. Construction Document level of design includes providing full drawing layouts created in AutoCAD, detail documentation, and specifications specific to all systems and components included under proposed services.
- 1.3.2. Correspond and coordinate with the City and DBM Design Team to coordinate final design related issues.
- 1.3.3. Before commencement of construction, the DBM will provide one (1) set of 100% construction document drawings and specifications stamped by a licensed Arizona Engineer to the City. The drawings will be created in AutoCAD and will be printed on bond paper and/or provided in PDF format files as requested. Additional copies of plans will be stamped as required for permitting.
- 1.3.4. In addition to the stamped plans listed above, DBM anticipates submitting .pdf format files and/or one-full size hard copy plan set at the following construction document stages of progress:
 - 1.3.4.1. 50% CD set.
 - 1.3.4.2. 95% CD plan review set.
- 1.3.5. Provide design documents to include:
 - 1.3.5.1. Provide final load calculations MP&E; pumps, motors, lighting and controls, BTU Calc. and establish pool service location with MP&E.
 - 1.3.5.2. Equipment and Pipe flow diagram.
 - 1.3.5.3. Hydraulic calculations: suction, return, and gravity piping and backwash piping to sanitary sewer.
 - 1.3.5.4. Layout of surge tank, gutter, pool edge.
 - 1.3.5.5. Sanitation equipment: Specification for automated chemistry control devices and alarms, disinfection system and delivery equipment, PH control and delivery equipment.
 - 1.3.5.6. Equipment area and/or room design.

- 1.3.5.7. Provide structural engineer specifications for: Steel schedule, mix designs, and pool shell design/thickness.
- 1.3.5.8. Timing System specifications and design details for; conduit and cable runs, touch pad, scoreboard, and head judge's podium.
- 1.3.5.9. Finalized Detail pages.
- 1.3.5.10. Finalized Written specifications in Architect Format.
- 1.3.5.11. Provide final cross-sections through the pool illustrating all structural elements in both horizontal and vertical planes, including walls, floors, decks, gutters, and associated components, with all elevations and dimensions clearly indicated.
- 1.3.5.12. Handicap lift, footing and design.
- 1.3.5.13. Deck slope and drainage design sheet.
- 1.3.5.14. Plan submittals to local jurisdictions (State/County/City, as applicable).
- 1.3.5.15. Address all review comments.
- 1.3.5.16. Provide Final set of Approved Construction plans and specs.

1.4. **Design Allowance**

- 1.4.1. If necessary, provide design requirements for equipment room, including architectural, structural, geotechnical testing, MPE from source, civil as determined once initial site investigation is completed

2. **Deliverables.** DBM agrees to:

- 2.1. Provide ongoing cost estimates based on design documents, field conditions, and City input
- 2.2. Deliverables will include full written narratives based on each component of the Project on a division by division basis, On Screen Takeoff visuals of quantity takeoffs, drone photos, and customized budgets
- 2.3. Analyze the Project scope, systems and materials
- 2.4. Regular constructability reviews with Designers and City
- 2.5. Perform site investigations to verify existing conditions
- 2.6. Identify multiple recommended bid packages to capitalize on long lead or volatile materials
- 2.7. Prepare subcontractor bid list and review with City and architect
- 2.8. Recommend any alternative selection methods to expedite certain trades
- 2.9. Provide preconstruction schedule to meet needs of the Project
- 2.10. Complete GMP packages as needed to meet Project budget and schedule.
- 2.11. Provide Visual Design and Modeling of the Project to assist in the preconstruction, construction, and community outreach efforts of the Project.

3. **Schedule.** The Services will commence upon receipt of an executed Agreement and will take 20 weeks.

EXHIBIT B
HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the DBM and its Subconsultants follow and are based on the approved proposal submitted to the City on October 29, 2025. Tasks and total project amount may be found in Section 3.0 of the Contract.

STANDARD RATE SCHEDULE

Professional

PreCon Director.	\$150/HOUR
Project Manager.....	\$110/HOUR
Project Estimating.	\$110/HOUR
Estimating Coordinator	\$55/HOUR
Superintendent.....	\$100/HOUR

AUTO MILEAGE	Current IRS Rate
AUTO RENTAL	Actual
OTHER TRAVEL.....	Actual
EQUIPMENT RENTAL.....	Actual + 10%
POSTAGE/FREIGHT.	Actual + 10%
REPROGRAPHICS.....	Actual + 10%
SUBCONSULTANTS	Actual + 5%

Note: Any changes in Project Staffing, including key Design-Builder personnel or design professionals, will require prior written approval from Lake Havasu City.

EXHIBIT C
SUBMITTAL REQUIREMENTS FOR THE GMP

GMP submittal, one copy for review.

Two (2) copies will be requested by the Project Manager prior to contract execution.

GMP Cost Model Exhibit Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values – Direct and Indirect cost summary: Unit prices and quantity take-offs using the City's standard pay items; Details of all Allowances and unit price work shown and specified in the detailed design documents; All fixed equipment, site improvements, and utility and equipment installations; Field Office overhead; Home Officer overhead; Bonds, taxes, insurance; The DBM Contractor's fee (percentages for self-performed work and subcontractor work when different).
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Subcontractor Bids on Subcontractor Letterhead
 7. Project Schedule showing critical path construction items
-
- A. Scope of Work will consist of a brief description of the work to be performed by DBM and major points that the DBM and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
 - B. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:
 - C. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, Allowances, bid contingency, General Conditions Costs, taxes, bonds, insurances, and the DBM's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable: material costs, equipment costs, labor costs, hourly labor rates, and total cost. Labor costs shall include the employee classification, benefits, payroll taxes and other payroll burdens. The total cost for any portion of the work to be performed by subcontractors shall include subcontractor overhead and profit. Production rates, transportation and other facilities and services necessary for the proper execution of the work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the work. Copies of quotations from subcontractors and suppliers. Memoranda, narratives, consultant's reports and all other information used by the DBM Contractor to arrive at the GMP. The GMP must include all assumptions, descriptions and a breakdown of all Allowances.

EXHIBIT C
SUBMITTAL REQUIREMENTS FOR THE GMP

GMP SUMMARY			AMOUNT
	COST OF THE WORK - DIRECT COSTS	AMOUNT	
A	Subcontractors' Cost of the Work (Labor, Materials, Equipment, Warranty, Insurance, Profit)	\$	
B	DBM Self-Performed Cost of the Work (Labor, Materials, Equipment, Warranty)	\$	
C	Total Cost of the Work (A+B)		\$
	INDIRECT COSTS	AMOUNT	
D	General Conditions (Negotiated Amount)	\$	
E	Total Cost of the Work + General Conditions Fee (C+D)		\$
F	Payment and Performance Bonds (On Cost of the Work + General Conditions Fee)	\$	
G	Insurance (Additional DBM's Insurance not provided in the Total Cost of the Work)	\$	
H	Subtotal Direct + Indirect Costs (E+F+G)		\$
I	DBM Construction Fee (Negotiated Fixed Fee)	\$	
J	Taxable Project Subtotal (H+I)		\$
K	Taxes (Actual Reimbursable limited by Not to Exceed)	\$	
L	Project Subtotal (J+K)		\$
M	CITY'S PROJECT CONTINGENCY (As determined by the City)		\$
N	TOTAL GMP (Not to Exceed) (L+M)		\$

- D. A list of the Plans and Specifications with latest issuance date including all Addenda used in preparation of the GMP Proposal. The plans used for the GMP must be date stamped and signed by DBM, DBM Design Team, and Project Manager using the format below.

Plans Used for Preparation of GMP No.	
DBM	Date
DBM Design Team	Date
Project Manager	Date

EXHIBIT C
SUBMITTAL REQUIREMENTS FOR THE GMP

- E. A list of the clarifications and assumptions made by the DBM in the preparation of the GMP Proposal, to supplement the information contained in the documents.
- F. All Subcontractor Bids for the Project on the Subcontractor's Letterhead.
- G. A Critical Path Method diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.