



City of Sedona, Arizona

UPTOWN SR 89A ROADWAY AND PEDESTRIAN ACCESS IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

DESIGN PHASE SERVICES

April 1, 2015

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City of Sedona, Arizona

UPTOWN SR 89A ROADWAY AND PEDESTRIAN ACCESS IMPROVEMENTS CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES

THIS CONTRACT, made and entered by and between City of Sedona, an Arizona municipal corporation, hereinafter designated the "CITY" and _____, a corporation, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CMARisk".

RECITALS

- A. The City Manager of the City of Sedona, Arizona, is authorized to execute contracts for professional services and construction services.
- B. The City intends to construct the UPTOWN SR 89A ROADWAY AND PEDESTRIAN ACCESS IMPROVEMENTS Project, as more fully described in Exhibit A attached, hereinafter referred to as the "Project".
- C. The design of said Project will be completed through a design contract the City has entered into with Peak Engineering, Inc., hereinafter referred to as the ("Design Professional").
- D. The CMARisk has represented to the City the ability to provide design phase services and to construct the Project.
- E. The CM@ Risk is aware that the City's intent is that the construction budget for this Project is \$830,000 or less, and in good faith, is entering this contract with the aim of accomplishing this intent.
- F. Based on this representation, the City intends to enter into a contract with the CMARisk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CMARisk for construction phase services.

AGREEMENT

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

ARTICLE 1 – TERMS AND DEFINITIONS

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

Agreement (Contract) – This written document signed by the City and CMARisk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

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

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

City (Owner) – The City of Sedona, a municipal corporation, with whom CMARisk has entered into this Contract and for whom the services is to be provided pursuant to said Contract. Regulatory activities handled by the City of Sedona Community Development, Planning, Building Inspection, Engineering Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Representative – Means the designated City Project Manager or Project Management consultant. Stephen Craver, Associate Engineer, is the City's Representative for this work.

City's Senior Representative – Means the City of Sedona's designated Division/Department Head. J. Andy Dickey, PE, Assistant Community Development Director/City Engineer is the City's Senior Representative for this work.

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

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

Construction Fee – The CMARisk's administrative costs, home office overhead, and profit, as applicable to this project, whether at the CMARisk's principal or branch offices.

Construction Manager at Risk (CMARisk) – The firm selected by the City to provide the Design Phase Services as detailed in this Agreement.

CMARisk Representative – CMARisk designates _____ as its CMARisk Representative.

CMARisk Senior Representative – CMARisk designates _____ as its Senior CMARisk Representative.

Contingency, CMARisk's – A fund to cover cost growth during the Project used at the discretion of the CMARisk, usually for costs that result from Project circumstances. The amount of the CMARisk's Contingency will be negotiated as a separate line item in the GMP package. Use and management of the CMARisk's Contingency is described in Section 2.7.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the City, usually for costs that result from City-directed changes. The amount of the Owner's Contingency will be set solely by the City and will be in addition to the project costs included in the CMARisk's GMP package. Use and management of the Owner's Contingency is described in Section 2.7.

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

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

Cost of the Work – The direct costs necessarily incurred by the CMARisk in the prudent, efficient and proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of

materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CMARisk's Construction Fee, General Conditions Cost, or taxes.

Critical Path Method – A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest time required to complete the project. Delay in completion of the identified activities will cause a delay in achieving Substantial Completion.

Day(s) – means calendar days unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CMARisk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CMARisk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed local supplier utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team and other services set forth in the agreement or reasonably inferable therefrom.

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

Drawings (Plans) – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by the CMARisk during the construction phase and which have been prepared or approved by the City; includes Drawings that have reached a sufficient stage of completion and released by the Design Professional or its assigned agent solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates. For the majority of the projects, these documents are final and ready for bidding; however, there will be some modifications created by deleted, changed or added work. Shop Drawings are not Drawings as so defined.

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

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

General Conditions Costs includes, but is not limited to, the following types of costs for the CMARisk during the construction phase: (i) payroll costs for project manager or CMARisk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CMARisk or Subcontractors.

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

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

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CMARisk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

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

Notice to Proceed or “NTP” means the directive issued by the City, authorizing the CMARisk to start Work.

Payment Request – The form that is accepted by the City and used by the CMARisk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

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

ProjectTeam – Design phase services team consisting of the Design Professional, CMARisk, City's Representative, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – A statement furnished by the CMARisk to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating the CMARisk's applications for progress payments.

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

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

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

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

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

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

Substantial Completion – Means the established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) approval by the Sedona Fire District Fire Marshall or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review; (vi) all required test results delivered to the City in legible, typed format.

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

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

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

2.1.1 The CMARisk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City, exercising the degree of care, skill and judgment a professional construction manager performing similar services would exercise at such time, under similar conditions. The CMARisk 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, except for minor changes occurring in the process of conducting the geotechnical tests. The CMARisk shall restore the City's property to as close to the pre-existing state as practicable.

2.1.2 Program Evaluation: As a participating member of the Project Team, the CMARisk will provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

2.1.3 Project Meetings:

2.1.3.1 The CMARisk will attend Project Team meetings that may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, and partnering sessions.

2.1.3.2 The CMARisk and the City of Sedona shall conduct a neighborhood meeting during the design phase services to inform the public of the project and obtain input for consideration during the construction phase of the work. The CMARisk shall coordinate and schedule the meeting, obtain the meeting location, notify the affected property owners and residents, take notes, and publish the minutes of the meeting.

2.1.4 The CMARisk will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMARisk will promptly notify the City in writing whenever the CMARisk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 The CMARisk, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CMARisk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.1.6 Additional Services

2.1.6.1 The CMARisk shall conduct a review of the plans and specifications received for the Project.

2.1.6.2 The CMARisk work tasks shall include design of electrical, drainage facilities and stage facility

construction means and methods, as appropriate, to produce the cost-related project revisions desired.

2.1.6.3 The CMARisk shall identify needed staging areas.

2.1.6.4 The CMARisk shall outline necessary working times and timeframe. Consideration shall be given to the adopted Uptown Operating Guidelines in developing working times and time frames.

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2.3 PROJECT MASTER SCHEDULE

2.3.1 Within one week of Notice to Proceed, the CM@ Risk shall produce a Project Master Schedule. The fundamental purpose of the "Project Master Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Master Schedule requirements. The CMARisk will, however, develop and maintain the "Project Master Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Master Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CMARisk will use scheduling software to develop the Project Master Schedule that is acceptable to the City. The Project Master Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Master Schedule will indicate milestone dates for the phases once determined.

2.3.2. The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

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

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

2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

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

2.3.2.5 The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.

2.3.2.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CMARisk activities.

2.3.2.7 The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site.

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2.3.5 Float time shall be as prescribed below:

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

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

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

2.3.5 The Project Schedule will be updated and maintained by the CMARisk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMARisk's plan for the performance of the construction phase Work. The CMARisk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMARisk will include with such Submittals a narrative describing its analysis of the progress achieved to-date vs that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. (See 2.7.6 and 2.7.6.1)

2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CMARisk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CMARisk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

2.4.1 The CMARisk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Master Schedule.

2.4.2 The CMARisk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMARisk to construct the Project. Before initiating construction operations, the CMARisk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

2.4.3 The CMARisk will meet with the Project Team as required to review designs during their development. The CMARisk will familiarize itself with the evolving documents through the various design phases. The CMARisk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. The CMARisk will furthermore advise the Project Team on proposed site improvements, excavation and

foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CMARisk will recommend cost effective alternatives.

- 2.4.4 The CMARisk will conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team, and at a minimum, as scheduled and identified by milestones in the Project Master Schedule required in Article 2.3 above. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability and Cost Reduction Reviews: The CMARisk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CMARisk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.3 The CMARisk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMARisk.
- 2.4.4 Notification of Variance or Deficiency: It is the CMARisk's responsibility to assist the Design Professional in ascertaining that, in the CMARisk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMARisk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

2.5 COST ESTIMATES

- 2.5.1 Within two weeks of Notice to Proceed, the CMARisk shall provide a detailed project budget and a written review of the documents. The Design Professional and CMARisk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the CMARisk shall make appropriate recommendations on methods and materials to the City and Design Professional that it believes will bring the project back into the Project budget.
- 2.5.3 In between these milestone estimates, the CMARisk shall periodically provide a tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CMARisk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CMARisk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.6 SUBSURFACE INVESTIGATION

- 2.6.1 The CMARisk shall perform subsurface exploration in the vicinity of the project as required to avoid or minimize conflicts with adjacent utilities, and to determine soil characteristics for use in design and determination of methods of construction.

2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

- 2.7.1 As part of this contract, the CMARisk shall provide a GMP proposal to the City. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "C" attached). The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CMARisk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based. The CMARisk guarantees to complete the Project at or less than the final approved GMP Proposal amount, plus approved Change Orders, and agrees that it will be responsible for any increase in the actual cost of the Work above that amount.

- 2.7.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

- 2.7.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.

- 2.7.2.2 The General Conditions Costs is a firm fixed lump sum and the Construction Fee is a fixed percentage of the Cost of the Work.

- 2.7.2.3 CMARisk Contingency is an amount the CMARisk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, subject to prior written confirmation to the City that the issue for which the contingency was created has occurred or (2) with written approval of the City for increases in General Condition Costs. CMARisk's Contingency is assumed to be a direct project cost so all applicable markups will be applied at the time of GMP submission.

- 2.7.2.4 Taxes are deemed to include all sales, use, consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

- 2.7.3 Owner's Contingency are funds to be used at the sole discretion of the Owner. Owner's Contingency will be added to the Contract Price for approval by Council to cover any increases in Project costs that result from Owner-directed changes not included in CM@ Risk contingency. At the time that Owner's Contingency is used, the appropriate markups will be applied to actual costs.

- 2.7.4 GMP amendments are cumulative except for the CMARisk's Contingency. The amount of the CMARisk's Contingency for each GMP will be negotiated separately.

- 2.7.5 The CMARisk, in preparing any GMP Proposal, will obtain from the City of Sedona, signed, sealed, and dated plans and specifications developed by Design Professional, and any modifications or changes by the City of Sedona. The CMARisk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the current construction documents and drawings and authorized modification thereto. The CMARisk will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. In addition, the CMARisk shall include documents depicting any design modifications or additions accomplished by the City and CMARisk during the design phase. The CMARisk will send one set of those documents to the City's Representative and keep one set. If deemed necessary, the City of Sedona shall produce one set of construction CMARisk GMP Construction Documents in a manner that

will set these documents apart from previous documents and provide one set to the CMARisk Contractor.

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

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

2.7.7 GMP savings resulting from a lower actual project cost than anticipated by the CMARisk remaining at the end of the project will revert to City.

2.7.8 GMP Proposal(s) Review and Approval

2.7.8.1 The City may request a GMP from the CMARisk at any time during the Design Phase. It is the City's expectation that the GMP shall not exceed the City stated Project Budget (See Exhibit A).

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

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

2.7.8.4 In the event that the GMP exceeds the City's Project budget, the City reserves the right to direct the CMARisk and the CMARisk shall work in conjunction with the City to assist in the redesign of the Project as necessary to meet the agreed-upon program and the stated Project budget as follows:

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

Notwithstanding anything in the RFP or the CMARisk's response to the contrary, the CMARisk shall perform the work set forth in this section without additional compensation.

2.7.8.5 The City upon receipt of any GMP proposal from the CMARisk, may submit the GMP Plans and Specifications to a third party for review and verification.

2.7.8.6 If the CMARisk GMP Proposal is greater than the third party estimate, or if the City, for some other stated reason, may require the CMARisk to reconfirm its GMP Proposal. The CMARisk will accept the third party's estimate for the cost of Work as part of its GMP, or present a report within seven (7) days

of a written request by the City for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the City may raise. The CMARisk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City.

2.7.8.7 If, during the review and negotiation of GMP Proposals, design changes are required, the City will authorize and revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMARisk. The CMARisk will promptly notify the City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7.8.8 After final submission of the GMP, the City may do any of the following:

- a) Accept the CMARisk original or revised GMP Proposal, if within the City's budget, without comment.
- b) Accept the CMARisk original or revised GMP Proposal that exceeds the City budget, and indicate in writing to the CMARisk that the Project Budget has been increased to fund the differences.
- c) Reject the CMARisk original or revised GMP Proposal in which event, the City may terminate this contract and/or elect to not enter into a separate contract with the CMARisk for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.7.8.9 Upon acceptance by the City of a GMP, the City shall prepare and the CMARisk shall execute the City's specified form of contract to reflect the GMP, and the GMP as approved shall become part of the Construction Services Contract. The City's contract will contain provisions concerning insurance, bonding, progress payments, retentions, and damages as required by law. Within 14 days after execution of the Construction Services contract, the CMARisk shall provide to the City all required insurance certificates, a Performance Bond and a Labor and Material Payment Bond each for 100% of the full Contract price.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

The CMARISK has developed a Subcontractor Selection Plan (SSP) for this project. The City of Sedona has reviewed and approved the SSP, which is Exhibit D. To ensure compliance with the Project Schedule and costs, the CMARISK may self-perform any portion of the work without bidding or re-bidding said portion of the work. The City has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, CMARisk shall ensure compliance with Arizona Revised Statutes § 34-603 et seq. as amended in 2005 and as it may be further amended relative to the selection of Subcontractors and major Suppliers.

2.8.1

2.8.2 The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the CMARisk can demonstrate, in writing, that it is in the best interest of the Project and that the selection process will constitute a prudent use of public funds. Once a qualifications-based selection is made by joint action on the part of the City and the CMARisk, only those subcontractors selected will be utilized for the intended scope of work during the construction phase of the project.

2.8.2.1 Qualification-based selection of a Subcontractor(s) or Supplier(s) should only occur prior to the submittal of the GMP Proposal. Should a subcontractor need to be replaced, the procurement process for the replacement subcontractor must be approved by the City.

- 2.8.2.2 The CMARisk must receive City approval of the selected Subcontractor(s) or Supplier(s). On the work that the CMARisk plans to self-perform under this alternative, the CMARisk must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The CMARisk must further provide documentation to demonstrate that for any work that is self-performed, the cost of any such work is a reasonable and prudent use of public funds. The City must approve the CMARisk self-performance of any part of the work and the cost therefore prior to accepting the GMP proposal.
- 2.8.2.3 The CMARisk will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.
- 2.8.2.4 Within five (5) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the CMARisk shall then prepare a report for the City's approval identifying the recommended Subcontractor or Supplier for each category of the Work to be performed. The report shall be in a format approved by the City's representative and shall include, among other things, the amount of each such cost. The CMARisk may, at its discretion or at the request of the City's representative, request written verification of any costs selected. The CMARisk shall provide an explanation of the qualifying factors for each selection.
- 2.8.3 CMARisk shall obtain from selected and approved Subcontractors or Suppliers a Schedule of Values with their bid proposals. Such Schedule of Values will be used to create the overall Project Schedule of Values.
- 2.8.4 The CMARisk shall be responsible for the resolution of subcontractor or supplier bid withdrawal, protest, or disqualification in connection with the award without additional compensation.
- 2.8.5 The CMARisk is responsible for insuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.
- 2.8.6 The CMARisk is solely responsible for the performance of the selected Subcontractors or Suppliers.

ARTICLE 3 – PERIOD OF SERVICES

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

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

4.1.1 Based on the design phase services fee proposal submitted by the CMARisk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CMARisk a fee not to exceed ~~15~~ _____ as follows:

For the basic services described in Article 2 and the CMARisk's Design Phase Services Proposal included as Exhibit B, the CMARisk shall receive a fee not to exceed: _____

Additional services and allowances, as described in subsection 4.3:

N.A.

Additional Services identified below

Total Contract Amount, not to exceed,

\$ _____
\$ _____
\$ _____

4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CMARisk for design phase services will be submitted on the City's "Contract 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 Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. 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.

4.2.2 The fees for the CMARisk and any Subconsultants will be based upon the proposal included as Exhibit B attached. The fees for additional work by the CMARisk and any Subconsultants shall be negotiated and a change order for such additional work shall be executed.

4.2.3 The CMARisk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CMARisk has received payment for those services from the City.

4.2.4 The CMARisk 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. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CMARisk 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 herein.

4.2.5 No compensation to the CMARisk will be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

4.2.6 If any service(s) executed by the CMARisk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMARisk, the CMARisk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

4.3.1 CMARisk may be required to provide services in excess of those set forth in Article 2. Mark-ups are not authorized and only the reimbursables specifically identified below will be reimbursed as authorized herein. Any additional services must be requested by the City, in writing, prior to the delivery of said services. There shall be no payment by City for any additional services provided prior to or without the

written request of the City for said services.

- 4.3.2 When authorized by the City, the CMARisk will be entitled to reimbursement at cost of design phase services-related expenses incurred for the following items:
- (a) Reasonable charges for air transportation (not to exceed standard coach rates), ground travel (for automobile rental, taxi, parking, etc. not to exceed \$50 per day), and authorized expenses while traveling (not to exceed the corporate rate at major business hotels in the area and a per diem for meal and miscellaneous business expenses of \$45) shall be reimbursed. The CMARisk shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed \$0.00 without further approval of the City.
 - (b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the Project will be reimbursed. These costs will not exceed \$0.00 without further approval of the City.
 - (c) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the City. The cost of such service will not exceed \$0.00 without further approval of the City.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CMARisk, will furnish the following information:
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CMARisk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the person designated to be the City's representative during the term of this Contract. The City's Representative has the authority to administer this Contract and will monitor the CMARisk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the City's Representative.
- 5.2 The City additionally will:
- 5.2.1 Contract with a design professional for assistance in coordinating the work by the design professionals that were involved in the initial preparation of the plans and specifications of the project as initially bid. The contract scope with the design professional does not include actual design or redesign related to changes to the plans and specifications. In the coordination role, the City-contracted design professional will request comment and approval regarding changes from the initial preparation design professionals, as needed.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMARisk except for those copies whose cost has been reimbursed by the City.
 - 5.2.3 Provide the CMARisk with adequate information in its possession or control regarding the City's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CMARisk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CMARisk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CMARisk's receipt of such notice.

- 5.2.5 Notify the CMARisk of changes affecting the budget allocations or schedule.
- 5.3 The City's Representative will have authority to approve the Project Budget and Project Master Schedule, and render decisions and furnish information the City's Representative deems appropriate to the CMARisk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 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 specifically 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 City's Representative before the final payment is made to the CMARisk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMARisk, which consent the CMARisk will not unreasonably withhold, the City agrees to hold the CMARisk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CMARisk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CMARisk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CMARisk.
- 6.1.3 License to City for Reasonable Use: The CMARisk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CMARisk and its Subconsultants will endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CMARISK'S WORK

The CMARisk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CMARisk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMARisk in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the CMARisk's work or Deliverables will in no way relieve the CMARisk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the design architect.

6.3 ALTERATION IN CHARACTER OF WORK

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

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMARisk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMARisk in connection with the CMARisk's performance of this Contract is confidential and proprietary information belonging to the City.
- 6.4.3 The CMARisk will not divulge data to any third party without prior written consent of the City. The CMARisk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 6.4.3.1 Data which was known to the CMARisk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
 - 6.4.3.2 Data which was acquired by the CMARisk in its performance under this Contract and which was disclosed to the CMARisk by a third party, who to the best of the CMARisk's knowledge and belief, had the legal right to make such disclosure and the CMARisk is not otherwise required to hold such data in confidence; or
 - 6.4.3.3 Data, which is required to be disclosed by the CMARisk by virtue of law, regulation, or court.
- 6.4.4 In the event the CMARisk is required or requested to disclose data to a third party, or any other information to which the CMARisk became privy as a result of any other contract with the City, the CMARisk will first notify the City as set forth in this Article of the request or demand for the data. The CMARisk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CMARisk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

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

6.5 PROJECT STAFFING

6.5.1 Prior to the start of any work or Deliverable under this Contract, the CMARisk will submit to the City, an organizational chart for the CMARisk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMARisk desires to change such key personnel from performing such services under this Contract, the CMARisk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CMARisk 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 services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CMARisk's staff, the CMARisk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

6.6.1 The CMARisk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CMARisk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

6.7.1 Prior to beginning the work or Deliverable, the CMARisk will furnish the City for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

6.8.1 The City and the CMARisk hereby agree to the full performance of the covenants contained herein, 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 CMARisk.

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

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

6.8.4 The CMARisk will appraise the work completed and submit an appraisal to the City for evaluation. The

City will have the right to inspect the CMARisk's work or Deliverable to appraise the work completed.

- 6.8.5 The CMARisk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable direct costs and direct expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CMARisk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with Paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CMARisk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTE AVOIDANCES AND RESOLUTION

- 6.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CMARisk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 6.9.2 CMARisk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CMARisk's Representative and City's Representative.
- 6.9.3 If a dispute or disagreement cannot be resolved through CMARisk's Representative and City's Representative, CMARisk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 6.9.4 If a dispute arises out of or relates to this agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure.
1. Mediator Selection. The mediator shall be selected through mutual agreement of the parties.
 2. Fees and Costs. Each party agrees to bear its own fees and costs in mediation. The cost of the mediator shall be borne equally by the parties.
 3. Subsequent or Contemporaneous Contracts. The parties shall include this provision in all subsequent or contemporaneous contracts relative to this matter, absent specific written agreement of the parties otherwise.
 4. Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.
 5. Waiver. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.
- 6.9.5 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this agreement must be filed in the Yavapai County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

6.10 WITHHOLDING PAYMENT

6.10.1 The City 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 CMARisk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

6.11.1 Records of the CMARisk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CMARisk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CMARisk'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 Contract Amount and/or payments made on this Contract if, upon audit of the CMARisk's records, the audit discloses the CMARisk has provided false, misleading, or inaccurate cost and pricing data.

6.11.2 The CMARisk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/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 Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

6.12.1 To the fullest extent permitted by law, the CMARisk shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the CMARisk, its officers, employees, agents, or any tier of subcontractor in connection with CMARisk's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

6.13 NOTICES

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

To City:	J. Andy Dickey, PE, Assistant Community Development Director/City Engineer 102 Roadrunner Drive Sedona, Arizona 86336 (928) 203-5039
To CMARisk	

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

6.14 SECTION LEFT INTENTIONALLY BLANK

6.15 COMPLIANCE WITH ALL LAWS

6.15.1 CMARisk will comply with all applicable Federal, State, County and City laws, regulations and policies, including but not limited to the mandatory statutory provisions in the Affidavit of Lawful Presence (if applicable), attached and made a part of this Agreement. CMARisk understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. CMARisk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

6.16.1 To evaluate and avoid potential conflicts of interest, the CMARisk will provide written notice to the City, as set forth in this section, of any work or services performed by the CMARisk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CMARisk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

J. Andy Dickey, P.E., Assistant Community Development Director/City Engineer
City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336

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

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CMARisk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

6.16.3 The CMARisk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CMARisk 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.

6.16.4 The CMARisk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

6.17.1 Prior to award of the Contract, the CMARisk must provide to the City of Sedona, its Contractor's License

Classification and number and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

6.18.1 The City and the CMARisk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CMARisk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relationship be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

6.19.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

6.20 COVENANT AGAINST CONTINGENT FEES

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

6.21 NON-WAIVER PROVISION

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

6.22 JURISDICTION

6.22.1 This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Yavapai County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

6.23 SURVIVAL

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

6.24 MODIFICATION

6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid,

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

6.26 INTEGRATION

6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

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

6.28 THIRD PARTY BENEFICIARY

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

6.29 COOPERATION AND FURTHER DOCUMENTATION

6.29.1 The CMARisk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

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

6.31 CITY'S RIGHT OF CANCELLATION

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

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

6.32.1 Any plans or specifications received by the CMARisk regarding this project are for official use only. The CMARisk may not share them with others except as required to fulfill contract obligations with the City of Sedona.

ARTICLE 7 - INSURANCE

The CMARisk will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables hereunder by the CMARisk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurer shall have an AM Best rating of B+6 or better. Coverage shall be provided and maintained throughout the design phase services contract period. Insurance requirements related to any construction Work done during the design phase or during the construction phase will be defined in a separate contract associated with the construction phase. The CMARisk will cause all Subcontracts to contain identical terms and conditions to those included in this Article. An endorsement for insurance policies shall be required to demonstrate actual and appropriate coverage. A copy of the endorsement shall be provided to the City by the CMARisk relative to its required insurances.

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

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

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

7.1.1.1 Commercial General Liability-Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate/per project	\$4,000,000 / \$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 100,000

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

Combined Single Limit Per Accident for Bodily Injury and Property Damage (For more than one person)	\$1,000,000 \$2,000,000
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7.1.1.3 Workers Compensation and Employers Liability

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

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

7.2 OTHER INSURANCE REQUIREMENTS

7.2.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

7.2.1.1 The City of Sedona, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of the CMARisk, including the City's general supervision of the CMARisk; products and completed operations of the CMARisk; and automobiles owned, leased, hired or borrowed by the CMARisk.

7.2.1.2 The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or underground hazard ("EXU").

7.2.1.3 The City, its officers, officials, agents, and employees will be additional insureds to the full limits of liability purchased by the CMARisk, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85.

- 7.2.2 The CMARisk's insurance coverage will be primary insurance with respect to the City, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the CMARisk's insurance and will not contribute to it.
- 7.2.3 The CMARisk's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by the CMARisk and its Subcontractors will not be limited to the liability assumed under the indemnification provisions of this Contract.
- 7.2.4 The policies will contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed for the City.
- 7.2.5 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed for the City.

7.3 SUBCONSULTANT INSURANCE

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

7.4 NOTICE OF CANCELLATION

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

City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336

7.5 ACCEPTABILITY OF INSURERS

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

7.6 VERIFICATION OF COVERAGE

- 7.6.1 The CMARisk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement(s) that restricts or limits coverages will be clearly noted on the certificate of insurance.
- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or signing of this Contract, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All Certificates of Insurance required by this Contract will be sent directly to Engineering Services. The Project Number and Project description will 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.

7.7 APPROVAL

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____.

CITY OF SEDONA, ARIZONA,
An Arizona Municipal Corporation
Karen Daines, Interim City Manager

CMARisk

By: _____
Karen Daines
Interim City Manager

By: _____
Name in Print
Title

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A – PROJECT DESCRIPTION

SECTION I – PROJECT DESCRIPTION

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

The intent of the project is to provide an ADA accessible corridor from SR 89A to the existing municipal parking facility. This project is anticipated to consist of construction of sidewalk, curb ramps, drainage improvements, parking improvements, retaining wall(s), elevated walkway (pedestrian bridge), pedestrian lighting and an elevator facility. The project is located in the Uptown business district within the City of Sedona boundary. Construction is scheduled to begin in the summer of 2015.

This project design will be completed by the City's selected design professional, Peak Engineering, Inc., Flagstaff, Arizona. The City of Sedona Community Development, Engineering Services shall administer the Construction with assistance from the Design Professional.

After the CMARISK has reviewed the design of the plans, specifications and estimates, at each design level, the CMARISK will be responsible for assisting the City of Sedona in identifying the revisions to the documents that may result in a construction project within the stated City budget for this work. The CMARisk shall also develop a construction schedule and GMP.

SECTION II – SCOPE OF WORK

The CMARisk will participate in the design phase and will, if the City approves an acceptable Guaranteed Maximum Price (GMP), hold the construction contract with the City for construction of the project. At some point prior to construction, as determined by the design team, the CMARisk will, upon acceptance of a GMP by the City, assume the risk of delivering the project through a GMP contract. The CMARisk will be responsible for construction means and methods, and will be required to solicit bids from qualified subcontractors to perform portions of the work. CMARisk self-performance shall be subject to the provisions of ARS-34 or as it may be modified or interpreted by law.

The City of Sedona Budget for this work is: \$830,000

Design phase services provided by the CMARisk include those services called out in the Design Phase Services Proposal furnished by CMARisk Contractor dated _____.

A. Design phase services by the CMARisk may include the following:

- Provide design assistance and services necessary to finalize the design to a point where the CMAR can provide a GMP for the work.
- Identify any and all permits necessary to commence and finish the construction work and assign responsibility to the concerned parties for obtaining the respective permits, and document City and CMAR agreed assignment for obtaining;
- Review the existing plans and specifications and provide comments regarding constructability, required clarifications and measures to reduce costs;
- Provide alternate systems evaluation and constructability studies;
- Participate in other project meetings with the City or the Design Professional to include at least one City Council meeting per GMP contract proposal;
- Advise the City of ways to mitigate time and impact of construction activities on the general public;
- Provide project planning and scheduling including the design and construction phase schedule, utility locates and potholing as required;
- Perform subsurface exploration within the limits of the work and the vicinity of the project as required to avoid or minimize conflicts with utilities;
- Identify staging area(s) needed for the work;
- Develop site specific SWPPP and emergency operations plans;

- Provide for construction phasing and scheduling that will minimize interruption to City operations and neighborhood activities adjacent to the project work areas;
- Advise City of ways to gain efficiencies in project delivery and reduce overall delivery time;
- Provide long-lead procurement studies and initiate procurement of long-lead items;
- Participate with the City in a process to set goals for local subcontractor, supplier, and tradesperson participation;
- Provide GMP proposals at mutually agreeable times as directed by the City;
- Assist in the permitting processes;

EXHIBIT B – CMARISK DESIGN PHASE SERVICES PROPOSAL

Attached is **Uptown SR 89A Roadway and Pedestrian Access Improvements Project - CMAR.** Design Phase (Pre-Construction Services) Proposal dated _____.

EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP proposal(s) Submittals; one copy for review, eight copies will be requested by the City's Project Representative prior to contract execution. The eight copies must be velo punched and bound.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Master Schedule

1. Scope of work will consist of a brief description of the work to be performed by CMARisk and major points that the CMARisk and the City must be aware of pertaining to the scope.
2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

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

PROJECT #: CMAR 003-2014/15

DATE: _____

PROJECT NAME: – UPTOWN SR 89A ROADWAY AND PEDESTRIAN ACCESS IMPROVEMENTS

PROJECT CMARISK

GMP Summary			AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)		\$ To be Determined
		RATE	
INDIRECT COSTS			
B.	CMARisk's Contingency		\$
C.	Construction Fee		\$
D.	General Conditions		\$
	D1	Payment and Performance Bond (Phase1) \$	Included in D above
	D2	Insurance \$	Included in D above
E.	Sales Taxes 65% Of		\$
F. TOTAL GMP			\$ To be Determined
G. Owner's Contingency			\$ To be Determined

Formulas:

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

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

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

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

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

For questions regarding the submittal requirements, please contact J. Andy Dickey, PE, Assistant Community Development Director/City Engineer, City of Sedona, at 928 203-5039 or adickey@SedonaAz.gov.

EXHIBIT D – CM@RISK SUBCONTRACTOR SELECTION PLAN

Attached is the _____, Scope of Services, which includes the Subcontractor Selection Plan dated _____.