	Paloma Elementary School District, #94 Notice of Request for Qualifications		38739 W Interstate 8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 1 of 48	

Release Date: September 26, 2014

Request for Qualifications # 14-04-18

Material and/or Service: **CM@R Services for Demolition and Replacement of Space at Paloma Elementary School**

RFQ Due Back Date: October 16, 2014

Time: 11:00 a.m. , Local Time

Preconference: Friday October 3, 2014 at 9:00AM

Submittal Location: Paloma Elementary School District #94
Procurement Department
HCO 1 PO Box 172
38739 W Interstate-8
Gila Bend, AZ 85337

PRE-SOLICITATION MEETING - There will be a non- mandatory pre-solicitation meeting Friday October 3, 2014 at 9:00AM. In accordance with School District Procurement Rules in the Arizona Administrative Code (A.A.C.) promulgated by the State Board of Education pursuant to A.R.S. 15-213, and A.A.C. R7-2-1100-1115, procurement of specified professional services and construction using the alternative project delivery methods for the materials or services specified will be received by the Paloma Elementary School District #94, at the above specified location, until the time and date cited. Qualifications received by the correct time and date shall be opened and the vendors submitting shall be publicly read. All other information contained in the submission shall remain confidential until award is made. If you need directions to our office, please call (928) 683-2588. **We are NOT in an overnight delivery area.**

The full solicitation will be posted at www.palomaesd.org by September 26th. You may download it there. This is a courtesy notification. This RFQ is being advertised in the Arizona Business Gazette, the "office newspaper" for Maricopa County.

Statement of Qualifications shall be in the actual possession of the District, at the location indicated, on or prior to the exact time and date indicated above. Late Qualifications shall not be considered.

Statement of Qualifications must be submitted in a sealed envelope with the solicitation number and Offeror's name and address clearly indicated on the envelope. All Qualifications must be written legibly in ink or typewritten. Additional instructions for preparing are provided herein.

VENDORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE REQUEST FOR QUALIFICATIONS.

Questions regarding this Request for Qualifications should be directed, in writing, to:

Kristn Turner

September 26, 2014


Kristn Turner
Superintendent

Date

928.683-2093 Fax
928.683-2588

kturner@palomaesd.org

Questions should be submitted by Fax

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DOCUMENTS REFERENCED:

You may access a copy of the documents referenced within this solicitation at the following web addresses:
Arizona Revised Statutes (A.R.S.) is available at: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

The Arizona School District Procurement Rules in the Arizona Administrative Code is available at:
http://azsos.gov/public_services/Title_07/7-02.htm#Article_10.

I.R.S W-9 Form (Request for Taxpayer I.D. Number) is available at: <http://www.irs.gov/pub/irs-pdf/iw9.pdf>.

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1. Definition of Terms

As used in these instructions, the terms listed below are defined as follows:

- A. **“Attachment”** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **“Architect”** means a professional firm and individual registered by the Arizona Technical Board of Registration to offer and practice professional architectural services in Arizona.
- C. **“Contract”** means the combination of the Solicitation, including the uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
- D. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- E. **“Contractor”** means any person who has a contract with the School District.
- F. **“Days”** means calendar days unless otherwise specified.
- G. **“Engineer”** means a professional firm and individual registered by the Arizona Technical Board of Registration to offer and practice professional engineering services in Arizona.
- H. **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.
- I. **“Firm”** means the title under which one or more persons conduct business as registered by the Arizona Technical Board of Registration and the Arizona Corporate Commission. Offeror firms are Architectural firms; Civil Engineering firms, Structural Engineering firms, Mechanical Engineering firms, Plumbing Engineering firms, and Electrical Engineering firms.
- J. **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value present or promised, unless consideration of substantially equal or greater value is received.
- K. **“Offer”** means bid, proposal or quotation.
- L. **“Offeror”** means a vendor who responds to a Solicitation.
- M. **“Procurement Officer”** means the person duly authorized to enter into and administer Contracts and make written determinations with respect to the Contract or his or her designee.
- N. **“Responsible Offeror”** means the offeror who has the capability to perform the contract requirements and the integrity and reliability to assure complete and good faith performance and who submits the lowest bid.
- O. **“Responsive Offeror”** means the offeror who submits a bid that conforms in all material respects to this Invitation for Bid, Instruction to offeror and the Plans and Specifications which are incorporated herein by this reference.
- P. **“Solicitation”** means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Qualifications (RFQ).
- Q. **“Solicitation Amendment”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- R. **“Subcontract”** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.
- S. **“School District” means the School District that executes the contract.**

2. Inquiries

- A. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing, and check its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for withdrawing the Offer after the Offer due date and time nor shall it give rise to any Contract claim.
- B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact


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person. The Offeror shall not contact or direct inquires concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

- C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry since it may then be identified as an Offer and not be opened until after the Offer due date and time.
- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven (7) days before the Offer due date and time. Failure to do so may result in the inquiry not being answered.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment . An Offeror may not rely on verbal responses to inquiries.
- F. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment .
- G. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time, and location appear on the Solicitation cover sheet or elsewhere in the Solicitation. An Offeror should raise any questions it may have about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment .
- H. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.


3. Offer Preparation

- A. Forms: No Facsimile or Electronic Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the form. A facsimile, electronic or mailgram offer shall be rejected.
- B. Typed or Ink; Corrections. The Offer must be typed or in ink. Erasures, interlineations or other modifications in the Offer must be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation must be submitted with the Offer and must include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate, and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, may result in rejection of the Offer.
- D. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be

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considered as a part of any resulting Contract.

1. Request for Proposals: All exceptions that are contained in the Offer may negatively affect the proposal evaluation based on the evaluation criteria as stated in the Solicitation or result in rejection of the Offer.
- E. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- F. Cost of Offer Preparation. The District will not reimburse any Offeror the cost of responding to a Solicitation.
- G. Solicitation Amendments. Unless otherwise stated in the Solicitation, each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment or to follow the instructions for acknowledgement of the Solicitation Amendment may result in rejection of the Offer.
- H. Federal Excise Tax. School Districts are exempt from Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- I. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax number and/or Federal Employer Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Cost Form.
- J. Identification of Taxes in Offer. School Districts are subject to all applicable state and local transaction privilege taxes. If Arizona resident Offerors do not indicate taxes on a separate item in the Offer, the School District will conclude that the price(s) offered includes all applicable taxes.
- K. Disclosure. If the Firm, business, or person submitting this Offer has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror must fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- L. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
 1. Amendments;
 2. Special Terms and Conditions;
 3. Uniform General Terms and Conditions;
 4. Statement of Scope of Work;
 5. Specifications;
 6. Attachments;
 7. Exhibits;
 8. Special Instructions to Offerors; and
 9. Uniform Instructions to Offerors

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- M. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

4. Submission of Offer

- A. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation, in a sealed envelope or package that identifies its contents as an Offer and the Solicitation number to which it responds. The appropriate Solicitation number shall be plainly marked on the outside of the envelope or package.
- B. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- C. Public Record. Under applicable law, all Offers submitted and opened are public records and must be retained by the School District. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the School District. If an Offeror believes that information in its Offer should remain confidential, it shall stamp as confidential that information and submit a statement with its Offer detailing the reasons that information should not be disclosed. The School District shall make a determination on whether the stamped information is confidential pursuant to the School District's Procurement Code.
- D. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form and notarization the non-collusion affidavit or other official contract form, the offeror certifies that:
1. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its offer; and
 2. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders regarding employment.

5. Additional Information

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Taxes. All applicable taxes in the Offer will be considered by the School District when evaluating proposals; except when a responsive Offeror which is otherwise reasonably susceptible for award is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this state. In that event, all applicable taxes which are the obligation of Offerors in state and out of state, Offerors shall be disregarded in the Contract Award. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor.
- C. Late Offers. An offer submitted after the exact Offer due date and exact time shall be rejected.
- D. Disqualification. The Offer of an Offeror who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected.
- E. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for the Offer acceptance, the number of days shall be ninety (90). If a

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Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for ninety (90) days from the Best and Final due date.

F. Payment. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment within thirty (30) days.

G. Waiver and Rejection Rights. Notwithstanding any other provision of the solicitation, the School District reserves the right to:


1. Waive any minor informality;
2. Reject any and all offers or portions thereof; or
3. Cancel a solicitation.

6. Award

- A. Number or Types of Awards. Where applicable, the School District reserves the right to make multiple awards or to award a Contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the School District. If the Procurement Officer determines that an aggregate award to one Offeror is not in the School District's interest, "all or none" Offers shall be rejected.
- B. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by an authorized District Representative of the Offer and Acceptance Form. A letter or other notice of award or of the intent to award shall not constitute acceptance of the Offer.
- C. Effective Date. The effective date of this Contract shall be the date that the authorized District Representative signs the Offer and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.
- D. Final acceptance. The final acceptance will be contingent upon the approval of the Governing Board.

7. Protests

- A. A protest shall comply with and be resolved according to Arizona Department of Education School District Procurement Code Rule A.A.C. R7-2-1141 through R7-2-1150. Protests shall be in writing and be filed with the District Representative, Irma Garcia, Accounting Specialist. A protest of a proposed award or of an award must be filed within 10 days after the protester knows or should have known the basis of the protest. A protest must include:
 - a. The name, address and telephone number of the interested party.
 - b. The signature of the interested party or the interested party's representative.
 - c. Identification of the purchasing agency and the solicitation number.
 - d. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
 - e. The form of relief requested.


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1. Contract Interpretation

- A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona School District Procurement Code, Arizona Revised Statutes (A.R.S.) 15-213, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 7, Chapter 2, Articles 10 and 11.
- B. Implied Contract Terms. Each Provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- C. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.
- D. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- E. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- F. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

2. Contract Administration and Operation


- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall Contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4, 2000-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. At any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the School District and, where applicable, the Federal Government, the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the materials, at reasonable time for inspection of the materials and services covered under this Contract. The School District shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the School District determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the School District for testing and inspection.

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- E. Notices. Notices to the Contractor required by this Contract shall be made by the School District to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the School District required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notices shall be given by written notice and an Amendment to the Contract shall not be necessary.
- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the School District. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the School District. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the School District.

3. Costs and Payments

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the School District within thirty (30) days. The Purchase Order number must be referenced on the invoice.
- B. Applicable Taxes.
1. Payment of Taxes by the School District. The School District will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract/Purchase Order.
 2. State and Local Transaction Privilege Taxes. The School District is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 3. Tax Indemnification. Contractor and all Subcontractors shall pay all federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the School District harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
 4. IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the School District.
- C. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the School District for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The School District will make reasonable efforts to secure such funds.

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4. Contract Changes


- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract signed by the Procurement Officer. Changes to the Contract, including Preconstruction and Construction assignments with consideration of professional service fees and payment terms, or the substitution of work or materials will be handled through contract amendments. Amendments and contract changes are directed only by authorized representatives for the District. No amendments or contract changes directed by an unauthorized district employee or made unilaterally by the Contractor are enforceable. Unauthorized amendments or changes are violations of the Contract and or applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the authorized District Representative.

5. Risk and Liability

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. Any contract entered by the District shall include the following indemnification language.

"Contractor shall indemnify, defend, save and hold harmless Paloma Elementary School District #94 and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the District, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the District."

- C. Indemnification - Patent and Copyright. To the extent permitted by law, the Contractor shall defend, indemnify and hold harmless the School District against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District of materials furnished or work performed under this Contract. The School District shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

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D. Force Majeure.

1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
2. Force Majeure shall not include the following occurrences:
 - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
 - b. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. ; or
 - c. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

- E. Third Party Antitrust Violations. The Contractor assigns to the School District any claim for overcharges resulting from antitrust violation the extent that those violations concern materials of services supplied by third parties to the Contractor toward fulfillment of this Contract.

6. **Warranties**

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that for two years after acceptance by the School District of the materials or services, they shall be:
 1. of a quality to pass without objection in the trade under the Contract description;
 2. fit for the intended purposes for which the materials or services are used;
 3. Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
 4. Adequately contained, packaged and marked as the Contract may require; and


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5. Conform to the written promises or affirmations of fact made by the Contractor.

- C. Fitness. The Contractor warrants that any material or service supplied to the School District shall fully conform to all requirements of the Solicitation and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection testing of or payment for the materials or services by the School District.
- E. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.
- F. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contract shall maintain all applicable licenses and permits.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
 - 1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the School District is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.
 - 2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Offices, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

7. **School District's Contractual Remedies**

- A. Right to Assurance. If the School District in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing the Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the School District's option, be the basis for terminating the Contract under the Uniform General Terms and Conditions.
- B. Stop Work Order.
 - 1. The School District may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- C. Non-exclusive Remedies. The rights and the remedies of the School District under this Contract are not exclusive.
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The


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delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the School District may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- E. Right to Offset. The School District shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the School District or damages assessed by the School District concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform General Terms and Conditions.

8. Contract Termination

- A. Cancellation for Conflict of Interest. Per A.R.S. 38-511 the School District may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District is, or becomes at any time while the Contract or an extension the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- B. Gratuities. The School District may, by written notice, terminate this Contract, in whole or in part, if the School District determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the School District for the purpose of influencing the outcome of the procurement or securing the Contract, an Amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The School District, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.
- C. Suspension or Debarment. The School District may, by written notice to the Contractor, immediately terminate this Contract if the school District determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body.
- D. Termination for Convenience. The School District reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the School District without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the School District. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R7-2-1125 shall apply.
- E. Termination for Default.
1. In addition to the rights reserved in the Uniform Terms and Conditions, the School District reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
 2. Upon termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District.

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3. The School District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the School District for any excess costs incurred by the School District reprocurring the materials or services.

F. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

9. Contract Claims

All Contract claims and controversies under this Contract shall be resolved according to A.R.S. Title 15-213 and rules adopted thereunder.

10. Offshore Performance

Due to security and identity protection concerns, direct services under any subsequent contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the school district(s) or charter school(s) or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

11. Contractor’s Employment Eligibility

By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

The District may request verification of compliance from any contractor or subcontractor performing work under this contract. The District reserves the right to confirm compliance in accordance with applicable laws.

Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.


12. Terrorism Country Divestments

Per A.R.S. 35-392, the District is prohibited from purchasing from a company that is in violation of the Export Administration Act.

13. Fingerprint Clearance Cards

In accordance with A.R.S 15-512(H), a contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school may be required to obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. An exception to this requirement may be made as authorized in Governing Board policy.

Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District. Additionally, contractor shall comply with Governing Board Policies of Paloma Elementary Schools.

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14. Registered Sex Offender Notification Restriction

Contractor represents and warrants that no employee of the Contractor, or of its subcontractor, who has been adjudicated to be a registered sex offender will perform work on District's premises at any time without written approval of the District Representative.

Any breach of Contractor's or any subcontractor's warranty shall be deemed to be a material breach of this Contract, subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of the District's rights and the subcontractor's obligations hereunder. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor.

15. Clarifications/Discussions

Clarification means communication with Offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the submission. It is achieved by explanation or substantiation, either in response to an inquiry from the District or as initiated by Offeror. Clarification does not give Offeror an opportunity to revise or modify its Offer, except to the extent that correction of apparent clerical mistakes results in a revision.

16. Confidential Information


Confidential information request: If Offeror believes that its submission contains trade secrets or proprietary information that should be withheld from public inspection, a statement advising the School District of this fact shall accompany the submission, and the information shall be so identified wherever it appears. The School District shall review the statement and shall determine in writing whether the information shall be withheld. If the School District determines to disclose the information, the School District shall inform Offeror in writing of such determination.

17. Prohibition of Reprisals

Paloma Elementary Schools is committed to complying with Federal requirements related to whistleblower protections.

To that end, an employee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of;

- A. gross mismanagement of a contract or grant;
- B. a gross waste of public funds;
- C. a substantial and specific danger to public health or safety related to the implementation or use of public funds;
- D. an abuse of authority related to the implementation or use of public funds; or
- E. a violation of law, rule, or regulation related to a school district contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to public funds.

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SPECIAL TERMS AND CONDITIONS

1. Insurance and Safety:

A. Minimum Scope and Limits of Insurance

Engineer's Firm shall provide coverage with limits of liability not less than those stated below:

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, direct operations, sublet work, completed operations, sexual predator coverage, and broad form contractual liability coverage.

- General Aggregate/for this Project \$2,000,000/\$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$2,000,000
- Each Occurrence \$2,000,000
- Maximum Deductible \$2,000

- a. The policy shall be endorsed to include the following additional insured language: **"The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Engineer"**.

- b. Engineer's subconsultants shall be subject to the same minimum requirements identified above.

2. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: **"The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Engineer, including automobiles owned, leased, hired or borrowed by the Engineer"**.
- b. Engineer's subconsultants shall be subject to the same minimum requirements identified in this section.


3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the District.
- b. Engineer's sub-consultants shall be subject to the same minimum requirements identified in this section.

4. Professional Liability (Errors and Omissions Liability)

Each Claim \$2,000,000

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- a. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Architect/Engineer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. Policy shall contain a waiver of subrogation against the District.

5. Professional Liability (Errors and Omissions Liability) for Subconsultants In addition to the insurance requirements for the Architect/Engineer, the A&E's registered subconsultants are required to carry Professional Liability insurance as follows:

Each registered sub-consultant will carry:

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

All required subconsultants' certificates and endorsements are to be received and approved by the District before work commences. All insurance coverage for subconsultants shall be subject to the minimum requirements identified above, unless otherwise specified in this Contract.

6. Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:


- a. On insurance policies where the District is named as an additional insured, the District shall be an additional insured to the full limits of liability purchased by the Engineer even if those limits of liability are in excess of those required by this Contract.
- b. The Engineer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

B. Safety

Offeror, at its own expense and at all times, shall take all reasonable precautions to protect persons and the District property from damage, loss or injury resulting from the activities of Offeror, its employees, its subcontractors, and/or other persons present. Offeror will comply with all specific job safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety Health Act of 1970.

Ensure that no employee has possession of or engages in consumption of intoxicating beverages or illegal drugs or intoxicating quantities of un-prescribed or prescribed legal drugs while providing services under this contract.

2. **PURPOSE:** Pursuant to provisions of the School District Procurement Rules, the Paloma Elementary School District intends to establish a contract for Construction Manager at Risk Services for a Demolition and Replacement Project at the Paloma Elementary School. This will result in making space ready for specific functions. When the phase is finished, the Elementary School will be moving functions into these areas so that the next phase will take place.
3. **CONTRACT TYPE:** This Request for Qualifications (RFQ) document, firm's response, and the formal District Contract and General Conditions between Owner and Construction Manager at Risk will become the controlling contract documents for this procurement. The terms, conditions, and requirements of this RFQ will also be part of the final contract. The draft contract can be found at the end of this document. All construction work phases must be completed within 30 months of signing a design contract.

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4. **AUTHORITY:** This solicitation as well as any resultant contract is issued under the authority of the Governing Board or designee. No alteration on any resultant contract may be made without the express written approval of the Assistant Director of Business Services in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the School District Procurement Rules. Any such action is subject to legal and contractual remedies available to the District inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
5. **INTERPRETATION, AMENDMENT:** Should a firm find discrepancies in, or omissions from, the RFQ documents, or should he be in doubt as to their meaning, he shall at once notify the owner who will send a written Amendment to all interested parties. The owner will not be responsible for oral instructions or information. Questions received less than 72 hours before the RFQ opening may not be answered.

Any amendment issued by the owner during the time of offering are to be included in the RFQ, and in closing a contract they become a part thereof. Firms shall acknowledge receipt of any amendment within the RFQ submittal.

6. **REQUEST FOR QUALIFICATION QUESTIONS**

Offerors who have questions about this RFQ are required to submit their questions in writing to the Business Manager. All questions must be submitted by October 6, 2014 at 10:00 a.m. local time. Responses will be addressed in an amendment to the RFQ if necessary. Amendments must be acknowledged where designated in the solicitation. The purpose of the amendment is to clarify, if necessary, the terms of this Request for Qualifications, and to prevent any misunderstanding of the District's intention in this matter. If anyone should have a discrepancy in, or omission from, the general terms and conditions of this Request for Qualifications, or if in doubt as to their meaning, such matters should be presented in writing. Phone calls with questions or requests for information regarding the RFQ will not be accepted. Oral statements or instructions will not constitute an amendment to this RFQ. Please submit any questions or discrepancies to Kristin Turner by fax or email, kturner@palomaesd.org. We recommend you request a delivery and read receipt of all e-mails sent to the District regarding this solicitation.

7. **CHANGES TO WORK:** The District reserves the right to revise the work quantities, locations, and schedule and make other changes within the general scope of work as may be deemed necessary to best serve the interest of the District. All changes shall be documented by formal amendment or change order to the contract.
8. **CONTRACT MODIFICATION:** No modification of this contract shall bind the District unless a formal contract amendment is executed between the District and the contractor.
9. **SUBMITTAL OPENING:** Qualifications shall be opened on the date and time, and at the place designated on the cover page of this document, unless amended in writing by the District. The name of each offeror shall be read at this time. All offers and any modifications and other information received in response to the Request for Qualifications shall be shown only to authorized District personnel having a legitimate interest in the evaluation. After contract award, the proposals and evaluation document shall be open for public inspection.
10. **TIME STAMP FOR SUBMITTALS:** Submittals will be time stamped when received. They will be accepted up to, but no later than, the time indicated in the Request For Qualifications (RFQ). All submittals received after the time stated in the RFQ will not be considered and will be returned to the vendor unopened. The vendor assumes the risk of any delay in the U.S. Mail or in the handling of the mail by employees of the School District. Whether sent by mail or by means of personal delivery, the vendor assumes responsibility for having his RFQ deposited on time at the place specified. The official clock for determining the time shall be that utilized by the Business Department at the place RFQ's are received and stamped.
11. **O.S.H.A. GUIDELINES:** The contractor shall be familiar with and operate within the guidelines set forth by the Occupational Safety and Health Act. Pay for all operations requiring the placement and movement of the contractor's equipment, contractor shall observe and exercise, and compel his employees to observe and exercise, all necessary

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caution and discretion, so as to avoid injury to persons, damage to property of any and all kinds, and annoyance to or undue interference with the movement of the public and District personnel.

12. **SAFETY STANDARDS:** All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, the National Fire Protection Association Standards, and the Occupational Safety and Health Administration.
13. **DISTRICT PROPERTY:** The CM@Risk contractor shall protect all furnishings from damage and shall protect the School District's property from damage or loss arising in connection with this contract. The contract shall make good any such damage, injury or loss caused by his operations, or those of his employees, to the satisfaction of the District. The contractor shall confine his equipment, storage of materials, and the operation of his workmen to the limits as indicated by the Unit Foreman in the area in which the work is being performed. Any damage caused to District facilities, lawns, etc., shall be repaired immediately or replaced at no expense to the District.


The successful contractor shall take all necessary precautions for the safety of students, school employees, and public, and shall comply with all applicable provisions of Federal, State, and County Safety Laws. Contractor agrees that he is fully responsible to the District for the acts and omissions of any and all persons, whether directly or indirectly employed by him. He shall maintain such insurance as will protect him and the District from claims or damage for personal injury, including death, which may arise from operations under this contract.

14. **LIQUIDATED DAMAGES:** If the Contractor fails to deliver the project within the agreed to substantial and final completion dates, the District will incur sufficient damages. Actual damages are difficult to determine and quantify. Therefore, in lieu of actual damages, the successful Contractor shall agree to pay to the District liquidated damages in the amount of \$500.00 per calendar day for every day exceeding the established substantial completion date and \$500.00 for every day the contractor fails to achieve the final completion date. Liquidated damages will continue to accrue cumulatively until the project achieves these completion dates. The successful firm shall not be charged with liquidated damages when the delay arises beyond the control and without the fault or negligence of the Contractor. The District, at its sole discretion, will determine what event(s) is beyond the control the Contractor.
15. **PERFORMANCE BOND:** The successful CMAR contractor shall be required to furnish irrevocable security binding the contractor to provide faithful performance of the contract in the amount of 100% of the Guaranteed Maximum Price (GMP). Bonds shall be payable to the Paloma Elementary School District.

Performance security shall be in the form of a performance bond, certified check, or cashier's check. This security must be in the possession of the District Purchasing Department within the time specified or ten (10) days after agreement of GMP. If the contractor fails to execute the security document as required, the contractor may be found in default and the contract terminated by the District. In case of default, the District reserves all legal rights to rectify matter. All performance bonds must be executed on forms substantially equivalent to Performance Bond format attached to this RFQ.

Bonds must be issued by a surety company authorized to do business in Arizona, or in a manner satisfactory to the District.

16. **PAYMENT BOND:** The successful CMAR contractor shall be required to furnish a Payment Bond equal to 100% of the GMP. The bond shall be submitted within 10 days of the establishment of the GMP. The surety will be in the form of a bond, cashier's check, certified check, or money order. All payment bonds shall be executed on forms substantially equivalent to the sample enclosed with this RFQ. Personal and company checks are not acceptable unless they are certified. Bonds must be executed by a surety company authorized to do business in Arizona or otherwise secured in a manner satisfactory to the District.
17. **LICENSES:** Contractor shall maintain in current status all federal, State of Arizona and local licenses and permits required by the operation of the business conducted by the contractor.
18. **PERMITS:** Contractor shall be responsible for obtaining any and all permits required to perform this installation. The District will pay for any and all permitting. The installation shall be in complete compliance with all federal, state, and Maricopa County building codes. Contractor is responsible to close all permits for the project before final payment.

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19. **LIENS:** Because this is a public purchase, contractor shall hold the District harmless from any claimants supplying labor or materials to the contractor or his subcontractors in performance of the work required under this contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied before the District will make payment.
20. **LIENS WAIVERS:** Pursuant to A.R.S. 33-1008 standard lien waivers are to be submitted on all construction projects. The District requires the original copy to be submitted.
21. **FIRE PROTECTION:** Provide adequate fire extinguishers on the premises during the course of construction, of the type and size recommended by the NFPA, to control fires resulting from the particular work being performed. Instruct employees in their use. Place extinguishers in the immediate vicinity of the work being performed, ready for instant use. In the use of especially hazardous types of equipment, such as acetylene torches, welding equipment, etc., no work shall be commenced or equipment used unless fire extinguishers of an approved type and capacity are placed in the working area and available for immediate use by the workmen using the above-mentioned equipment.
22. **USE AND OCCUPANCY:** The owner reserves the right to use and occupy the whole or any part of these improvements. Such use and occupancy by the owner shall not, however, be construed as an acceptance of the work or any part thereof, and any claims which the owner may have against the contractor shall not be deemed to have been waived by such occupancy. Achievement of Substantial Completion and Final Completion shall be determined by project architect.
23. **BARRIERS:** The contractor shall provide barriers, as required, to permit public entry, to provide for District use of the site and to protect existing facilities and adjacent properties from damage.
24. **SITE INSPECTION:** Prior to submitting any GMP, successful firm shall visit the site and familiarize themselves with any conditions which may affect performance and total cost. Submission of the GMP will be prima facie evidence that the contractor did, in fact, make a site inspection and is aware of all conditions affecting performance and GMP prices.
25. **CLEAN UP:** The Contractor, at all times, shall keep the premises free from accumulation of waste materials or rubbish caused by construction operations. Upon completion of the work, remove all waste materials and rubbish from and about the project, as well as tools, construction equipment, machinery and surplus materials.

If the contractor fails to clean up the work, the District may do so and the cost thereof shall be charged to the contractor. Remove all surplus materials and debris of every nature resulting from operations, and put site in a neat, orderly condition.

Awarded firm must send a notarized letter stating the destination of all waste from the construction project at each phase.


26. **SPILLAGE:** Contractor will be responsible for the clean-up of a contamination or spillage resulting from the delivery and unloading.
27. **INSPECTION:** All materials, service, or construction are subject to final inspection and acceptance by the District. Materials failing to meet the requirements of this contract will be held at vendor's/contractor's risk and may be returned to vendor/contractor. If so returned, the cost of transportation, unpacking, inspection, repudiating, reshipping or other like expenses are the responsibility of the vendor/contractor.

Provisions

1. Equal Opportunity

The following provisions shall apply to this Contract and any construction contract or subcontract having a value of more than \$10,000:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff


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or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap, or national origin.
- (3) The contractor will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of the Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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The applicant further agrees that it will refrain from entering into any contractor or contract modifications subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violations of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions. Cancel, terminate, or suspend in whole or in part this grant (contract, loan insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Nondiscrimination

A contractor may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, national origin, handicap, or sex:

- (1) Deny any facilities, services, financial aid, or other benefits provided under the program or activity.
- (2) Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.
- (3) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid, or other benefits under the program or activity.
- (4) Treat an individual differently from others in determining whether the individual satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any facilities, service, or other benefits provided under the program or activity.
- (5) Deny an opportunity to participate in a program or activity as an employee.

3. Nondiscrimination Based on Handicap


No otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in employment, services, housing, building and services accessibility or any other aspects of this program. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and the Americans with Disabilities Act of 1990.

4. Lead Based Paint Poisoning Prevention Act of 1973

The contractor agrees that exterior and/or interior paints, enamels, and/or primers used on any surface in residential structures constructed or rehabilitated under this contract shall not contain more than 1/2 of 1% lead by weight (calculated as lead metal) in the total nonvolatile content of liquid paints. Contractor further agrees to abide by all federal, state and local rules and regulations now in force or to be enacted in the future pertaining to the lead based paint including, but not limited to, requirements of 24 CFR 35.10 through 35.25 and 24 CFR 570.608.

5. No Asbestos

Asbestos in any form shall not be used on this project. A certification for has been provided.

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Paloma Elementary Schools invites qualified Construction Management at Risk (CM@R) firms to submit their Statement of Qualifications in the format designated in the RFQ for the provision of CM@R Construction services.

The District engaged Molly Smith, AICP, REFP of thinkSMART planning, inc., to complete the educational and space planning. Her report will be the basis for design. Additionally, the District will be using The O'Malley Group for Project Management Services. **Do not contact Molly Smith directly.**

A Fee Schedule is not required at this time but you should be ready to submit it within 48 hours. Contract fees will be negotiated at such time as the most qualified firm is selected and approved. Should an agreement not be reached quickly, negotiations will proceed with the second-ranked, and, if necessary, the third-ranked firm. The District hopes to award a single contract for the Demolition and Replacement Project at Paloma Elementary School at its February 2014 Governing Board meeting.

The following map shows the legal description for Kiser Elementary School:

38739 West Interstate 8, Gila Bend, AZ 85337

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Paloma Elementary School District= Kiser Elementary Multi-Phase Project Descriptions

The project will consist of constructing a new classroom building at Paloma Elementary School and provide building demolition and new space at the existing campus. Prior to Design the Phases would appear to be in the following order and are subject to change after A&E and CM@R are awarded.

I Overview: Phase 1

The District also has a limited amount of time as this is an occupied campus, to relocate some of the existing functions such as solar panels within buildings on campus. The design team should study the site options and possible phasing developed to take place over 30 months. This first phase is to building to house PreK-Second grades which will replace an outdated building on site. Phase I will be utility infrastructure, Classrooms for grades PK, K, First and Second, along with associated playgrounds. The site will remain open for normal business throughout the project, with the understanding that certain services may be interrupted or limited at times.

II Overview: Phase 2

This second phase is to build a new structure to house Third through Eighth grades. Occupancy is late July with school beginning August 2016.

III. Overview: Phase 3

This third phase is to build a new structure to house the support areas of Administration, kitchen, and gym. Occupancy is for late July with school staring in August 2017.


IV. Overview: Phase 4

Phase 4 is a school swimming pool. If time and money permits. There is a 30 month limit on this contract. Otherwise this most likely will be a hard bid. Completion is scheduled for summer of 2017.

V. Architectural Firm: The District is currently seeking the Architectural Firm for these projects.

VI. The anticipated sub/trades need will include but not limited to:

- ✓ Surveying,
- ✓ earthwork,
- ✓ dust control,
- ✓ termite control,
- ✓ Asphalt and stripping.
- ✓ fencing
- ✓ site utilities, and underground,
- ✓ septic,
- ✓ landscaping,
- ✓ concrete,
- ✓ masonry,
- ✓ pre-cast concrete,
- ✓ structural steel,
- ✓ misc. steel,
- ✓ rough carpentry,
- ✓ Millwork,
- ✓ insulation,
- ✓ sealants,
- ✓ Hollow metal,
- ✓ doors & frames,
- ✓ overhead doors,
- ✓ hardware,


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- ✓ Glass & glazing,
- ✓ skylights,
- ✓ drywall,
- ✓ flooring,
- ✓ acoustical,
- ✓ special coating and finishes,
- ✓ Painting,
- ✓ fire suppression, way finding,
- ✓ Specialties, partitions,
- ✓ caulk boards,
- ✓ dry boards,
- ✓ kitchen equipment,
- ✓ pre-engineered metal building,
- ✓ plumbing,
- ✓ electrical,
- ✓ fire alarm,
- ✓ data cabling and testing,

VII. Pre-Construction Services

The CM@Risk will provide the following pre-construction services that may include, but are not limited to the following:

- A. Key project personnel shall attend regular meetings with the District and the Architect to review project status, review design and update the construction cost estimate.
- B. Consult with the District and architect and/or engineer regarding site use and improvements, phasing of the various projects, selection of materials, building systems and requirements. Firm shall make suggestions on which systems are most cost-effective.
- C. Conduct value engineering including estimates of alternative designs, procedures or materials, preliminary budgets and possible economies.
- D. Prepare and periodically update a preliminary project schedule for the architect's and/or engineer's review and the District's approval. At a minimum, this schedule shall be updated on a monthly basis.
- E. The firm shall coordinate and integrate the preliminary project schedule with the services and activities of the District, architect and/or engineer and CM@Risk. As the design proceeds, the preliminary project schedule shall be updated (at a minimum on a monthly basis) to indicate proposed activity sequences and duration, milestone dates for receipt and approval of pertinent information, and submittal of the Guaranteed Maximum Price (GMP) proposal.
- F. When design documents are complete, the firm shall prepare a detailed cost estimate with supporting data. The District will not proceed until the cost estimate is within the specified budget limits.
- G. During the preparation of the construction documents, the CM@Risk shall update and refine the cost estimate when the plans are approximately 95% complete and ready for regulatory review. If the estimate exceeds the approved budget, the CM shall make recommendations to the District and architect and/or engineer to reduce the cost of the project. In no case will the project be allowed to exceed the project budget, except for change orders requested by the District. This will conclude with a GMP submittal for owner approval.
- H. The CM@Risk will have full budgetary responsibility from the design phase through the establishment of the GMP on the project.
- I. The firm shall recommend to the District and architect and/or engineer a schedule for procurement of long lead time items that will constitute part of the work as required to meet the project schedule.


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VIII. Construction Services

Construction services may not commence until the District and the CM@Risk agree upon the terms of a GMP contract. If the District and the CM@Risk are unable to agree upon the terms of a GMP contract, the District reserves the right to end the association and prepare a new solicitation.

The CM@Risk will provide the following construction services that may include, but are not limited to, the following:

- A. The CM@Risk will be responsible in assuring that subcontractors abide by all law, code, statute, insurance, bonding and license requirements.
- B. Enter into "At Risk" contract with all subcontractors, material suppliers and equipment suppliers necessary for the construction of the proposed.
- C. Schedule and conduct pre-construction meetings.
- D. Provide continuous on-site construction services throughout the construction phase. Services shall include, but are not limited to:
 - Regular job site meetings and minutes.
 - Maintain daily on-site project log and schedule report.
 - Oversee quality assurance testing and inspection programs.
 - Maintain master set of construction documents on site to include all ASI's and supplemental sketches and provide copies to all subcontractors concerned.
 - Maintain financial project status reports.
- E. Develop, update and maintain master project schedules, detailed construction schedules, submittal schedules, inspection schedules and occupancy schedules.
- F. Report schedule variances and prepare recovery plans.
- G. Coordinate special consultants and testing lab services contracted by owner as required.
- H. Administer post building close-out and **two-year warranty** collection, start-up and transition to operation.
- I. Provide construction program accounting and reporting to the District as required.
- J. Work with architect and/or engineer and District personnel on the project and submit pay request for approval, issue RFI's when necessary, and assist the owner and architect as required for the timely completion of the project.
- K. Work with and coordinate activities with any third-party contract or contractors that the District provides for this project.

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The Selection Committee will evaluate the submissions and rank them from the one most likely to meet the needs of the District and satisfy the requirements of the RFQ. The District may consider it necessary to call for interviews to clarify information received in the submittal.

1. **EVALUATION OVERVIEW**

The District has elected to use the Construction Manager at Risk (CM@Risk) process for the selection of construction manager to perform pre-construction services and construction services for Security Upgrades and Front Office Renovations. The evaluation committee shall evaluate all submittals in accordance with defined criteria set forth in Submittal Requirements and Statement of Qualifications.

The District **will** interview 3 to 5 contractors that are reasonably susceptible of being awarded a contract if the committee determines it is necessary in selecting a final list. If the committee determines it is not necessary to interview contractors for selection on the final list, the committee will rank the top three contractors. In some cases, the District may proceed with a fewer number of proposers.

The District will then initiate negotiations with the highest ranked firm in order to agree to fair and reasonable fees related to pre-construction services, overhead and profit, and general conditions. If the District is unable to reach agreement with the top rated firm, the next highest rated firm will be invited to participate in fee negotiations (this process could be repeated until all short listed firms have been exhausted). Firms that are unable to accommodate the District regarding acceptable fees will not be allowed an opportunity to resubmit fees once they have been released from negotiations.

Pursuant to the School District Procurement Rules, construction services may not commence until the Paloma Elementary School District and the CM@Risk contractor have reached an agreement upon the terms of a Guaranteed Maximum Price (GMP) contract. Following the failure of an agreed upon GMP, the District may use any and all materials developed during the term of the pre-construction services.

2. **EVALUATION COMMITTEE**


The evaluation committee for this procurement shall consist of no less than five and no more than seven members as follows:

- District Administrators
- Licensed General Contractor - Senior Management
- Registered Architect/Engineer

The committee will remain the same throughout the entire evaluation process.

3. **PROPOSED SELECTION SCHEDULE**

- | | |
|--|------------------|
| <input type="checkbox"/> Request for Qualifications issued | September 2014 |
| <input type="checkbox"/> Due Date of RFQ Submittals | October 16, 2014 |
| <input type="checkbox"/> Initial Review and Scoring | October 21, 2014 |
| <input type="checkbox"/> Interviews if needed (Tentative) | October 28, 2014 |
| <input type="checkbox"/> Board Approval Date | November 2014 |

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VII. Evaluation Criteria Format- Total Points Available: 1,000 + 200 (interview if applicable)

Evaluation of the Request for Qualifications shall be based upon the following criteria listed in order of greatest importance:

A. Qualifications and Experience of Personnel Assigned - (300 points)

The overall qualifications and experience of key personnel assigned to perform construction services; The education and certification background of personnel shall be reviewed and tenure of the proposed personnel with submitting firm; The alternative delivery method skills of team shall be considered including estimating, value engineering, performing constructability reviews, establishing GMP's, and managing construction activities as the GC representative. All firms must be licensed in the State of Arizona.

B. Method of Approach - (250 points)

The overall method of approach described by the offeror in how they would implement and execute a CM@Risk contract in the Paloma Elementary School District based on the project identified; The detail and thoroughness of the plan evaluated from pre-construction services, establishment of GMP, execution of work, sub-contractor management plan, and warranty support; Ability of firm to comply with anticipated schedule of activities related to this project; The sub-contractor selection plan will be considered; The content of that plan in addressing the desire of the District to ensure a reasonable balance of both qualifications and price competition in sub-contractor selection. All subcontractors must be licensed in the State of Arizona.

C. Experience of Firm - (250 points)


The ability of the firm to demonstrate a level of competence in successfully completing similar CM@Risk educational based projects in an isolated rural setting as defined within the project scope section; Project references shall be considered under this category; Ability of firm to complete projects in accordance with contract requirements.

D. Organizational Strength - (150 points)

The financial condition of the offeror shall be reviewed to ensure long term viability; The safety record of the offer shall be considered; Bonding capacity shall be reviewed along with ability to provide necessary insurance requirements; The number of years in operation, knowledge of Arizona construction market, and reputation to attract quality sub- contractors shall be considered; The ability of the firm to effectively absorb new projects in light of existing work load.

E. Response Format - (50 points)

The ability of the firm to provide all information required at time of RFQ submittal and the quality on the statement of qualifications.

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1. **GENERAL**

- A. All interested and qualified Offerors are invited to submit a Statement of Qualification (SOQ) for consideration. Submission of a SOQ indicates that the offeror has read and understands this entire Request for Qualifications (RFQ), to include all appendices, attachments, exhibits, schedules, and Amendment (as applicable) and agrees that all requirements of this RFQ have be satisfied.
- B. SOQ must be submitted in the format described in the Statement of Qualifications Section.
- C. The SOQ must be complete in all respects as required in this Section. A proposal may not be considered if it is conditional or incomplete.
- D. All SOQ and materials submitted become the property of the District.

2. **PROPOSAL PRESENTATION**

- A. Interested firms shall prepare **one original and six copies** (total of seven sets) of the qualification package. The original should be marked "ORIGINAL" and the copies should be marked "COPY". All offers should be submitted with Tabs for each section as indicated in Section IV.
- B. The District shall not assume responsibility for any costs related to the preparation or submission of the proposal.
- C. Each firm shall be limited in the total number of pages submitted as part of their package. Due to the offeror's time and cost in preparing this document, along with the challenge of thoroughly reading and evaluating these documents, the District will limit the total number of content pages to 20 (single sided using minimum 11 point font). Documents that will not be considered in this total shall be:
 - a. resumes,
 - b. financial statements and/or letters from financial/insurance institutions,
 - c. cover page,
 - d. index,
 - e. Tab Pages (The tab pages will be used to reference each section and can be used for pictures or art work)
 - f. Mandatory Forms under Tab 7 such as Lobbying, Offer acceptance form, insurance certificates, non-collusion affidavit, and tab pages.

The District has attempted to streamline the amount of required information as noted in Statement of Qualifications Section. Firms are strongly encouraged to present their offers in strict accordance with the noted outline.

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SOQ-Required Information:

The Construction Manager at Risk (CM@R) Team will be selected through a qualifications-based selection process. Firms interested in providing CM@R services shall submit a Statement of Qualifications (SOQ) that addresses the following items:

1. BASIC COMPANY INFORMATION (Tab 1)

- A. Company name.
- B. Address.
- C. Telephone number.
- D. Fax number.
- E. Email address.
- F. Name of primary contact person.
- G. Number of years in business (under the submitted name) and number of years operating within the State of Arizona.
- H. Arizona licenses(s) held by the firm.
- I. If the firm has more than one office, provide specific information about the parent company and administering branch office.
- J. Indicate the type of ownership (corporation, joint venture, Limited Liability Company, sole proprietorship, etc.).

2. KEY PERSONNEL (Tab 2)


- A. Identify and present the project team consisting of all key personnel who will be specifically assigned to this project from pre-construction phase through project warranty phase (general management, project management, estimator, construction superintendent, marketing coordinator, etc.). Number of years with submitting firm shall be noted for each member.
- B. Detailed information regarding each key personnel's education and experience shall be clearly identified. Specific experience with performing CM@Risk projects shall be identified for each member. Resumes shall be provided for all assigned personnel. (Caution: The District fully expects the successful firm to follow through with the same personnel identified through this process. Any change to this assignment must be approved by the District).
- C. Provide an organizational chart of the team selected for the appropriate project scopes.

3. EXPERIENCE OF FIRM (Tab 3)

- A. Identify five most recent representative examples of similar work along with references for each. Information shall on the Project Information Sheet:
- B. Provide a statement of firm's history for submitting claims. Provide specific information, i.e., type of claim, date, reason, amount, and outcome, indicating the total number of claims filed during the past five years.
- C. Provide detail regarding any liquidated damages ever accessed by an owner for late completion of a project within the past five years.
- D. When responding to the project experience section of this RFQ (3-A above), firms shall include representative projects that support the chosen project.

4. ORGANIZATIONAL STRENGTH (Only submit this section in original set) (Tab 4)

- A. Provide audited financial statements representing the past two years. Provide Balance Sheets and the Statement of Income and retained earnings.
- B. Provide a letter from your bonding company indicating the ability to bond this project, the firm's maximum cumulative bonding limit, and your current bonding available capacity.

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- C. Provide a certificate of insurance indicating your firm's insurance coverage. A sample certificate may be provided. However, before any work is initiated, the successful contractor must provide a certificate that names PESD as additional insured.
- D. Provide a letter from your firm's insurance company stating the Workers' Compensation Experience Modification Rate (EMR) for the past three (3) years. The letter shall be on the insurance company's letterhead and shall be signed by an appropriate individual employed by the insurance company.
- E. Identify the current total dollar value of awarded construction work currently being managed by the local office. Identify the total number of direct employees of local office supporting construction value noted above. Identify your firm's current available bonding capacity.
- F. Identify any judgments or liens against your firm within the past three years.
- G. Identify any current unresolved bond claims against the offeror.
- H. Identify any deficiency orders issued against the prime contractor by the Arizona Register of Contractors over the past three years.
- I. Identify any filing under the U.S. Bankruptcy Code over the past three years.

5. **METHOD OF APPROACH (Tab 5)**


- A. Describe the firm's overall approach to this project including any difficulties the firm perceives.
- B. Describe the various pre-construction services offered for this project.
- C. Describe firm's approach and philosophy working at an active site with students and staff.
- D. The process of establishing the GMP shall be presented along with the recommended point of setting this price.
- E. The approach firm takes in performing the project once the GMP is set to include the following:
 - 1. Schedule adherence.
 - 2. Execution.
 - 3. Inspection.
 - 4. Quality assurance.
 - 5. Safety culture.
 - 6. Change orders.
 - 7. Overall management and approach to cost savings.
- F. Describe the firm's subcontractor management plan to include the following:
 - 1. Selection of subcontractors using both qualifications and cost as a selection approach (the District requires that at least three to five sub-contractors shall be solicited for all work including self-performed work).
 - 2. Subcontractor recruitment.
 - 3. Controversies and claims related to work performed by subcontractors.
- G. Describe firm's philosophy on self-performing any of the trade work along with a percentage of project that will be self-performed, if any.

6. **MISCELLANEOUS (Tab 6)**


- A. Firm shall provide a summary statement on why they would be the best fit for the Paloma Elementary School District to perform the CM@Risk project.
- B. Provide any additional information that would add value to the program offered that has not been identified above.

7. **FORMS (Tab 7)**

- A. Certification Regarding Debarment and Suspension

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- B. Certification Regarding Lobbying and Activities
- C. Confidential or Proprietary Information
- D. Amendment Acknowledgement
- E. Signature Page
- F. Asbestos and Hazardous Material Statement
- G. Familial Relationship Disclosure Form
- H. Offer and Acceptance Form
- I. Notarized Non-Collusion Statement
- J. W-9

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REFERENCE LISTING

It is the vendor's responsibility to send out a reference form to each client making sure the client completes the form and return the form **directly** back to the PESD Purchasing Department.

The form on the next page is to be completed by your clients. Your clients will then fax the form back to the Purchasing Department at 928-683-2093.

To do this, fill out the top portion, (**To, Name of your company, Company being surveyed, and Phone**) on the attached Contractor Reference Form. Fax, e-mail or mail the form to clients for which you have previously provided services. All clients must be different (can't have multiple people evaluate the same location). Clients shall complete the form and fax it to the Paloma Elementary School District directly by the time and date indicated. The maximum number of references that will receive credit is five and the minimum number is two. Credit will be given to vendors with more high performing references and School District experience.

Has your firm sent the attached Contractor Reference Form to <i>at least 5</i> client references?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Has your firm verified receipt of your submittal with each client referenced?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Has your firm given your clients a courtesy call to verify that they have sent the completed survey to the fax number provided on the form (928-683-2093) by the due date of October 16, 2014.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please list the client references below that received the Contractor Reference Form: (Company Name, Contact Name, Contact Number)		
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

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REFERENCE FORM

Top portion is to be completed by the vendor. Bottom portion is to be completed by the past client.

To the attention of: Name of client's company: Phone: Company being surveyed: Subject: To Whom It May Concern:
--

Paloma Elementary School District has implemented a process that collects past information on vendors. The information will be used to assist the District in the evaluation to determine responsive and responsible procurement of the above firms.

The company listed above has chosen to participate in this program. They have listed you as a past client that they have provided services for. Both the company and Paloma Elementary School District would greatly appreciate you taking a few minutes out of your busy day to complete the accompanying form.


Please evaluate the Performance of the vendor (10 means-you are Always satisfied and have no question about hiring them again, 5 means- you are Sometimes satisfied, and 1 means- you are very Dissatisfied and would never hire them again because of very poor performance). If you do not have sufficient knowledge of past performance in a particular area, leave it blank.

NO.	Criteria	Unit	Score
1	Ability to collaborate with the Architect and Project Manager	(1-10)	
2	Quality of Design Input during Preconstruction Services	(1-10)	
3	Ability to grasp and understand the needs of your entity and translate them successfully into the project.	(1-10)	
4	Ability to realize the value engineered savings after completion of your project(s)	(1-10)	
5	Ability to keep project on schedule	(1-10)	
6	Close out process (invoicing, no unexpected fees)	(1-10)	
7	Ability to Communication with your entity	(1-10)	
8	Ability to follow the user's rules, regulations, and requirements	(1-10)	
9	Overall customer satisfaction based on performance (comfort level in using vendor again)	(1-10)	

TOTAL POINTS _____

Thank you for your time and effort in assisting the vendor in this important endeavor. Please fax or email this questionnaire to **Paloma Elementary School District** at (928) 683-2093 fax or KTurner@palomaesd.org by 11:00 a.m., October 15, 2014.

Signature	Date	Title
Printed Name	*** Company being Surveyed***	

	Paloma Elementary School District, #94 Project Information Sheet		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 35 of 48	


PROJECT INFORMATION SHEET

Provide a listing of projects of similar size and scope to this project the firm has completed or is currently constructing. *Additional copies may be made as necessary for respondent to provide a complete response.*

Provide a listing of projects of similar size and scope to this project the firm has completed or is currently constructing. *Additional copies may be made as necessary for respondent to provide a complete response.* A copy of this table in Word .doc format is available for download from the Procurement Departments webpage under the heading for this solicitation.

Project Name/Description		Agency/Owner		Designer/Engineering Firm	
		Name:		Name:	
		Phone:	Fax:	Phone:	Fax:
Delivery Method (Design Bid Build, CMAR, Design Build, JOC)	Original Construction Cost (or 60% cost model if CMAR or DB*)	Final Construction Cost (or final GMP amount*)	Original Scheduled Completion Date	Actual Completion Date	
	\$	\$			
Reasoning for any differences between Original Construction Cost and Final Construction Cost:			Reasoning for any differences between Original Completion Date and Actual Completion Date:		
Major Risk Items Identified and Solutions Offered/Utilized:					
Value added Options or Differentiators (what you did that other firms would not):					

* (do not include any Pre or Post-construction Services costs)

	Paloma Elementary School District, #94 Performance Bond		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 36 of 48	

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____
(hereinafter called Principal), as Principal, and _____
_____, a corporation organized and existing under the laws of the State
Of _____, with its principal office in the City of _____
_____, (hereinafter called the
Surety), as Surety, are held and firmly bound unto the Kyrene Elementary School District (hereinafter called the Obligee) in the amount of _
_____(Dollars) (\$ _____), for the payment whereof,
the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____
day of _____, 20_____, for the material, service or construction
described as _____

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligations shall be void, otherwise to remain in full force and effect.

The prevailing party in a suit on this bond shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20 _____


Principal Seal

BY _____

Surety Seal

BY _____

Agency of Record

	Paloma Elementary School District, #94 Payment Bond		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 37 of 48	

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____
 (hereinafter called Principal), as Principal, and _____
 _____, a corporation organized and existing under the laws of the State
 Of _____, with its principal office in the City of _____,
 _____, (hereinafter called the
 Surety), as Surety, are held and firmly bound unto the Kyrene Elementary School District (hereinafter called the Obligee) in
 the amount of _____ (Dollars) (\$ _____), for the payment
 whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and
 severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____
 day of _____, 20_____, to construct and complete a certain
 work described as _____

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

The prevailing party in a suit on this bond shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20_____


 Principal Seal

BY _____


 Surety Seal

BY _____

 Agency of Record

	Paloma Elementary School District, #94 Certificate of Insurance		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 38 of 48	

CERTIFICATE OF INSURANCE					
PRIOR TO COMMENCING SERVICES UNDER THIS CONTRACT, THE CONTRACTOR MUST FURNISH THE DISTRICT, CERTIFICATION FROM INSURER(S) FOR COVERAGES IN THE MINIMUM AMOUNTS AS STATED BELOW. THE COVERAGES SHALL BE MAINTAINED IN FULL FORCE AND EFFECT DURING THE TERM OF THIS CONTRACT, AND SHALL NOT SERVE TO LIMIT ANY OTHER CONTRACTOR OBLIGATIONS.					
NAME AND ADDRESS OF INSURANCE AGENCY:		COMPANY LETTER	COMPANIES AFFORDING COVERAGE:		
		A			
		B			
NAME AND ADDRESS OF INSURED:		C			
		D			
LIMITS OF LIABILITY MINIMUM - EACH OCCURRENCE		COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	DATE POLICY EXPIRES
BODILY INJURY: PER PERSON EACH OCCURRENCE PROPERTY DAMAGE OR BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$1,000,000.00 \$2,000,000.00 \$1,000,000.00 \$1,000,000.00		COMPREHENSIVE GENERAL LIABILITY FORM PREMISES OPERATIONS CONTRACTUAL INDEPENDENT CONTRACTORS PRODUCTS/COMPLETED OPERATIONS HAZARD PERSONAL INJURY BROAD FORM PROPERTY DAMAGE EXPLOSION & COLLAPSE (IF APPLICABLE) UNDERGROUND HAZARD (IF APPLICABLE)		
SAME AS ABOVE			COMPREHENSIVE AUTO LIABILITY INCLUDING NON-OWNED (IF APPLICABLE)		
NECESSARY IF UNDERLYING IS NOT ABOVE MINIMUM			UMBRELLA LIABILITY		
STATUTORY EACH ACCIDENT	\$ 100,000.00		WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY		
			OTHER		
THE KYRENE ELEMENTARY SCHOOL DISTRICT IS ADDED AS ADDITIONAL INSURED AS REQUIRED BY STATUTE, CONTRACT, PURCHASE ORDER OR OTHERWISE REQUESTED. IT IS AGREED THAT ANY INSURANCE AVAILABLE TO THE NAMED INSURED SHALL BE PRIMARY OF OTHER SOURCES THAT MAY BE AVAILABLE.			IT IS FURTHER AGREED THAT NO POLICY SHALL EXPIRE, BE CANCELLED OR MATERIALLY CHANGED TO AFFECT THE COVERAGE AVAILABLE TO THE DISTRICT WITHOUT THIRTY (30) DAYS WRITTEN NOTICE TO THE DISTRICT. THIS CERTIFICATE IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURANCE COMPANY.		
NAME AND ADDRESS OF CERTIFICATE HOLDER:			DATE ISSUED _____		
			AUTHORIZED REPRESENTATIVE		

	Paloma Elementary School District, #94 Confidential or Proprietary Form		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 39 of 48	

If the Offeror has deemed any portion of their offer to be Confidential or Proprietary, they must specifically identify the section and page number(s) of the confidential/proprietary information below as well as include a statement advising the School District/Public Entity of why the information shall not be disclosed. The School District shall review the statement and determine whether the information will be withheld. If the School District determines to disclose the information, the School District shall inform Offeror in writing of such determination.


☐ This SOQ offer contains information that our firm believe is confidential or proprietary:

or

☐ The undersigned hereby acknowledges that there is no confidential or proprietary information contained within the offer.

Firm

Authorized Signature

	Paloma Elementary School District, #94		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	Amendment Acknowledgement Form		
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 40 of 48	


This page is used to acknowledge any and all Amendments that might be issued. If no Amendment is issued, you need not return this page. Your signature indicates that you took the information provided in the Amendment into consideration when providing your response.

Please sign and date

Amendment #1 _____ Date_____

Amendment #2 _____ Date_____


Amendment #3 _____ Date_____

	Paloma Elementary School District, #94 Check List Form		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 41 of 48	

SUMMARY/CHECKLIST

Please indicate that you have completed the following and have included them in this Request for Qualifications response:

- | | | |
|-----|--|------------------------------|
| 1. | Supplemental Questions | YES <input type="checkbox"/> |
| 2. | Contractors Reference List | YES <input type="checkbox"/> |
| 3. | Confidential or Proprietary Information Form | YES <input type="checkbox"/> |
| 4. | Amendment Acknowledgement Form | YES <input type="checkbox"/> |
| 5. | Summary/Checklist | YES <input type="checkbox"/> |
| 6. | Signature Page | YES <input type="checkbox"/> |
| 7. | Asbestos and Hazardous Material Statement | YES <input type="checkbox"/> |
| 8. | Familial Relationship Disclosure Form | YES <input type="checkbox"/> |
| 9. | Offer and Acceptance | YES <input type="checkbox"/> |
| 10. | Non-Collusion Affidavit | YES <input type="checkbox"/> |
| 11. | Have you included (1) original and (4) copies of your submittal? | YES <input type="checkbox"/> |
| 12. | Have you displayed the label on the outside of your submittal package? | YES <input type="checkbox"/> |
| 13. | Did you use the package label on the outside of your package? | YES <input type="checkbox"/> |

	Paloma Elementary School District, #94		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	Signature Form		
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 42 of 48	

SIGNATURE PAGE

Purchase orders issued to successful firm(s) will be made out to the company name indicated on the "Firm" line on this page. Be sure to fill in your company name as it will appear on your invoices in order to avoid delays in processing payment.

The signature on this page signifies that the submittal contained herein has been read thoroughly and is understood in its entirety and that the response submitted is accurate, reliable and in compliance with all requirements of the solicitation.

The persons, corporation, or company who makes the accompanying submittal, by the signature below, under penalty of perjury, certifies that such submittal is genuine and not sham or collusive, nor made in the interest or behalf of any person not herein named, and that the submitting company has not directly or indirectly induced or solicited any other person(s) to submit a sham offer, or any other person, corporation, or company to refrain from presenting a submission, and that the submitting company has not in any manner sought by collusion to secure for itself an advantage over any other company.

Firm

Authorized Signature/Local Representative

Typed Name/Position Held with Company

Mailing Address

City State Zip

Telephone Number

FAX Number


Federal Tax Identification Number

E-mail Address

COMPANY IS: (Please check those that apply):

☐ Corporation ☐ Partnership ☐ Limited Partnership ☐ Sole Proprietorship

Incorporated: ☐ Yes ☐ No Other: Please Explain Below

	Paloma Elementary School District, #94 Asbestos and Hazardous Material Statement		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 43 of 48	

PLEASE RETURN THIS SIGNED FORM ALONG WITH YOUR REQUEST FOR QUALIFICATIONS.

ATTENTION: Architects, Engineers, Consultants, Contractors, Sub- contractors, Craftsmen and Vendors. The following information is extremely important and must be adhered to without exception:

Asbestos Contained Building Materials (ACBM) will not be used on any project within the Paloma Elementary School District #94. ACBM is defined as any building material having an asbestos content of 1% or more. Typical examples of materials that may contain asbestos and therefore would be considered ACBM are: vinyl asbestos tile, certain forms of adhesive used to hold vinyl tile, certain forms of adhesive used to hold cove base molding, some thermal insulation, and transite paneling. The above list is not complete but merely represents some of the material more commonly found on job sites that are ACBM. As per EPA guidelines, some roofing material used on the exterior of the buildings may be considered ACBM. Address any questions concerning asbestos to Support Operations Director at 928-656-4310.

Solder and paint with any amount of lead is no longer authorized, and will not be used in any District projects.

HOLD HARMLESS:

Interface of work under this contract with work containing asbestos shall be executed by the contractor at risk and discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of this contract, the contractor acknowledges the above and agrees to hold harmless the owner, employees and agents and assigns for all asbestos liability which may be associated with respect to the above-mentioned standards, hazards, risks and liabilities.

I have read the above information and our firm will comply.

Company Name		

Authorized Signature/Local Representative		

Typed Name/Position Held with Company		

Mailing Address		


City	State	Zip

Telephone Number/FAX Number		

E-mail Address		

Date		

Federal Tax I.D. Number		

	Paloma Elementary School District, #94 Familial Relationship Disclosure Form		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 44 of 48	

Familial Relationship Disclosure Statement

All responses to this solicitation shall be accompanied by a sworn and notarized statement disclosing any familial relationship aka, conflict of interest that exists between the owner or any employee of the offeror and any member of the Governing Board of the Paloma Elementary School District or any employee of the Paloma Elementary School District:

The undersigned, the owner or authorized officer of _____

(the "Firm"), pursuant to the familial disclosure requirement provided in the attached solicitation, hereby represent and warrant, except as provided below, to their best knowledge that no familial relationships exist between the owner(s) or any employee of the company and any member of the Governing Board of the District, Superintendent of the Paloma Elementary School District or any employee of Paloma Elementary School District. If such a relationship exists, please explain:

(Signature of Person Authorized to Sign Offer)

(Title)


Subscribed and sworn to before me

this _____ day of _____, 20____

Signature of Notary Public in and for the

State of _____

County of _____

	Paloma Elementary School District, #94 Offer and Acceptance Form		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 45 of 48	

CERTIFICATION

By signature in the Offer section below, the offeror certifies:

1. The submission did not involve collusion or other anti-competitive practices.
2. The offeror shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. §§ 41-1461 through 1465.
3. The offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. §§ 41-4401 and A.R.S., §§ 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. In accordance with A.R.S. §§ 35-392, the Offeror is in compliance and shall remain in compliance with the Export Administration Act.
6. In accordance with A.R.S. §§15-512, the offeror shall comply with fingerprinting requirements unless otherwise exempted.

Arizona Transaction (Sales) Privilege Tax License Number: _____

For clarification of this offer, contact:

Federal Employer Identification Number _____

Name: _____

Phone: _____

Tax Rate: _____%

Fax: _____

E-Mail: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City

State

Zip

Title

ACCEPTANCE OF OFFER

The offer is hereby accepted.


The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the School District.

This contract shall henceforth be referred to as Contract No. _____.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.

Awarded this _____ day of _____ 2014

AUTHORIZED SIGNATURE

	Paloma Elementary School District, #94 NON-COLLUSION AFFIDAVIT		38739 W I-8 Gila Bend, AZ 85337 928-683-2588
	RFQ: 14-04-18 PROJECT: CM@R Services for Demolition and Replacement of Space at Paloma Elementary School	Page 46 of 48	

State of _____)
) ss.
 County of _____)

_____, affiant,
 (Print Name of Person Authorized to Sign Offer)

the _____
 (Title)

 (Company Name)

the persons, corporation, or company who makes the accompanying submittal, having first been duly sworn, deposes and says:

That such submission is genuine and not sham or collusive, nor made in the interest of, or behalf of, any persons not herein named, and that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a sham submission, or any other person, firm or corporation to refrain from offering, and that the Offeror has not in any manner sought by collusion to secure for itself an advantage over any other Offeror.

 (Signature of Person Authorized to Sign Offer)

 (Title)

Subscribed and sworn to before me

This _____ day of _____, 2014

CUT ALONG THE LINE AND AFFIX TO THE FRONT OF YOUR RESPONSE CONTAINER

SEALED QUALIFICATION PACKAGE

Submitted by:
City, State, Zip:
RFQ# 14-04-18 CM@Risk Services

Due Date: **October 16, 2014, by 11:00AM**

Paloma Elementary School District #94
Attn: **Purchasing/Kristin Turner**
38739 W Interstate-8
Gila Bend, AZ 85337

CUT ALONG THE LINE AND AFFIX TO THE FRONT OF YOUR CONTAINER

Paloma Elementary School District No. 94
Gila Bend, Arizona

PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94

ARCHITECTURAL AND ENGINEERING SERVICES

CONSTRUCTION MANAGER AT RISK

DESIGN PHASE SERVICES

PROJECT NO. 14-04-18

**Major Demolition and Replacement of Space at Paloma
Elementary School's Kiser Elementary School**

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PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94

**PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94
ARCHITECTURAL AND ENGINEERING SERVICES
CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES**

PROJECT NO. 14-04-18

THIS CONTRACT, made and entered into this by and between Paloma Elementary School District No. 94, an Arizona School District, hereinafter designated the "DISTRICT" and _____, an Arizona corporation, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@R."

RECITALS

- A. The Superintendent of the District is authorized and empowered by action of the District Governing Board, hereinafter "Board," in open public meeting, to execute this contract for professional services and related construction services.
- B. The District intends to _____, located at _____, as more fully described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project, the District has entered into a contract with _____ ("Architects") hereinafter referred to as the "Design Professional."
- D. The CM@R has represented to the District the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the District intends to enter into a contract with the CM@R for the design phase services identified in this contract. At the end of the design phase, at the District's sole discretion, the District may enter into a separate construction contract with the CM@R 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 District and the CM@R 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 District and CM@R 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 and have the potential to reduce construction costs while still delivering a quality and functional Project that meets District requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the District, CM@R and other parties as may be required or appropriate, 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.

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

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

Construction Fee – The CM@R's administrative costs, home office overhead, and profit, applicable to this work, whether at the CM@R's principal or branch offices.

Construction Manager at Risk (CM@R) - The firm, corporation, or other approved legal entity with whom the District has entered into this Contract to provide services as detailed in this Contract.

Contingency, CM@R's - A fund to cover cost growth during the Project used at the discretion of the CM@R usually for costs that result from Project circumstances. The amount of the CM@R's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@R'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 District usually for costs that result from District directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the District and will be in addition to the project costs included in each CM@R'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 District and the CM@R: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications; (v) Request for Qualifications (RFQ) No. 14-04-18 issued by the District relative to the Project.

Cost of the Work - The direct costs necessarily incurred by the CM@R in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by District), materials testing, and related items. The Cost of the Work shall not include the CM@R's Construction Fee, General Conditions Cost, or taxes.

Critical Path Schedule - The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will cause a delay in achieving Substantial Completion.

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

Deliverables – The work products prepared by the CM@R in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@R 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, MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

District (Owner) - The District, an Arizona School District, with whom CM@R has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@R during the construction phase and which have been prepared or approved by the Design Professional and the District. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but “*not for construction*”. 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 - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – Includes, but is not limited to the following types of costs for the CM@R during the construction phase: payroll costs for District Representative or construction manager for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@R or Subcontractors; and fees for licenses.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work including the Cost of the Work, CM@R’s Construction Fee, General Conditions Costs, sales tax, and CM@R Contingency. At the District’s sole discretion, the District may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work or for such other purpose that may be in the District’s best interest.

GMP Plans and Specifications – The three sets of plans and specifications provided pursuant to paragraph 2.7.7 upon which any Guaranteed Maximum Price Proposal is based. Separate GMP Plans and Specifications are required for each GMP.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@R 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 2.7 of this Contract. As stated above, at the District’s sole discretion, the District may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work or for such other purpose that may be in the District’s best interest.

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed (NTP) - A written notice given by District to the CM@R fixing the date on which the CM@R will start to perform the CM@R's obligations under this Contract.

Payment Request - The form that is accepted by the District and used by the CM@R in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the District.

Project - The works to be completed in the execution of this Contract as described in the Recital above and Exhibit "A" attached.

Project Team - Design phase services team consisting of the Design Professional, CM@R, District Representative(s), and other stakeholders who are responsible for making decisions regarding the Project.

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

Shop Drawings - All drawings, diagrams, schedules and other data specifically prepared for the Work by the CM@R 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 CM@R 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 CM@R 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 CM@R is responsible. Subcontractors will be selected through the Subcontractor selection plan described in paragraph 2.8 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that District can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by District Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the District or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the District; (vi) draft O&M manuals and record documents reviewed and accepted by the District; (vii) District operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase contract.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@R or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@R 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 CM@R, to further the interests of the District, will perform the services required by, and in accordance with this Contract, to the satisfaction of the District, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Northern Arizona would exercise at such time, under similar conditions. The CM@R 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 District.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@R will provide to the District, District representative(s), and Design Professional, a written evaluation of the District'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: The CM@R will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM@R will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@R will promptly notify the District in writing whenever the CM@R 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, any GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@R, when requested by the District, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@R 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.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@R shall prepare a Construction Management Plan (CMP), which may include the CM@R's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@R may, and at the written request of the District shall, add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may, and at the written request of the District shall, take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the District, Design Professional or

the CM@R, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the District.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and for the Project Team to utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@R will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the District. The CM@R will use scheduling software to develop the Project Schedule that is acceptable to the District. The Project 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 Schedule will indicate milestone dates for the phases once determined.
- 2.3.2. The Project 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 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.
 - 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 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 CM@R activities.
 - 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated rain 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. Weather data shall be based on information provided by the National Weather Services or other source approved by the District.
- 2.3.3 The Project Schedule shall consider the District's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the District or the

CM@R, 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.

- 2.3.4.2 The CM@R 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 legitimate delay, recognized in the Contract Documents, occurs which extends the Work beyond the Substantial Completion date.
- 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that District-caused delays on the Project may be offset by District-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@R, etc.). In such an event, the CM@R shall not be entitled to receive a time extension or delay damages until all District-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 CM@R throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@R's plan for the performance of the construction phase Work. The CM@R 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 CM@R will include with such submittals a narrative describing its analysis of the progress achieved to-date versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the District and Design Professional approve, the CM@R 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 CM@R 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 CM@R 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, any GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@R 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 CM@R to construct the Project. Before initiating construction operations, the CM@R may request additional investigations in any of their GMP Proposals to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@R will meet with the Project Team as required to review designs during their development. The CM@R will familiarize itself with the evolving documents through the various design phases. The CM@R 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 CM@R 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 CM@R will recommend cost effective alternatives.

- 2.4.4 The CM@R will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. 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 Reviews: The CM@R 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 Bidability Reviews: The CM@R will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the District 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 District, the CM@R will meet with the District and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@R'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 CM@R.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@R's responsibility to assist the Design Professional in ascertaining that, in the CM@R's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@R 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 District 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.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@R in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@R will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, the CM@R shall provide a detailed cost estimate and a written review of

the documents. The Design Professional and CM@R shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the District will make the final determination.

- 2.5.2 If any estimate submitted to the District exceeds previously accepted estimates or the District's Project budget, the CM@R shall make appropriate recommendations on methods and materials to the District and Design Professional that he believes will bring the project back into the Project budget.
- 2.5.3 In between these milestone estimates, the CM@R shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering, scope changes or other factors. It shall be the responsibility of the CM@R to keep the District and Design Professional informed as to the major trend changes in costs relative to the District's budget.
- 2.5.4 If requested by the District, the CM@R shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the District in the financing process.

2.6 [SECTION LEFT INTENTIONALLY BLANK]

2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.7.1 Any proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the District (see Exhibit "D" attached). The District may request a GMP Proposal for all or any portion of the Project, at any time during the design phase, and at such other times and for such other purposes as may be beneficial to the District. Any GMP Proposals submitted by the CM@R will be based on and consistent with the current updated/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 CM@R guarantees to complete any portion of the Project subject to a separate GMP at or less than the approved GMP Proposal amount for that portion of the Project and the Project at or less than any 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 these amounts.
- 2.7.2 At the District's sole discretion, the District may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work; procure materials, equipment and/or supplies as may be advantageous to the District; and/or, for such other purpose that may be in the District's best interest. If multiple or phased GMPs are utilized, they shall comply with all requirements set forth in this section 2.7 and all other sections of this Agreement. Acceptance of one GMP does not obligate the District to accept subsequent or any other GMPs, nor does it obligate the District in any manner beyond the GMP actually accepted. The Contractor shall provide the GMP document and a detailed schedule of values in a format that will be provided by the District. The GMP is subject to modification only as expressly provided for in this Agreement.
- 2.7.3 If a GMP, or any one of multiple or phased GMPs, is not established or agreed to by the District, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement of design phase services as set forth in this Agreement. There shall be no termination fees, penalties or payments due, payable or paid from or by District to Contractor in the event that this Agreement or any construction agreement arising from this Agreement between the parties is rescinded, modified or terminated due to the rejection of, failure to agree to, or failure to establish for any and whatever reason any GMP that may be proposed or considered. No amount shall be paid for any services not established or agreed to by the District absent a written agreement between the parties to the contrary.
- 2.7.4 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

- 2.7.4.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.7.4.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 2.7.4.3 CM@R's Contingency is an amount the CM@R may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the District for increases in General Condition Costs. CM@R's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.
- 2.7.4.4 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.
- 2.7.5 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 to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. At the time that Owner's Contingency is used, the appropriate markups will be applied.
- 2.7.6 GMPs are cumulative except for CM@R Contingency. The amount of CM@R Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@R's risk from that point in the project forward.
- 2.7.7 The CM@R, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CM@R will prepare any GMP in accordance with the District's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@R 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. The CM@R will send one set of those documents to the District's District Representative, keep one set and return the third set to the Design Professional.
- 2.7.8 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications for that GMP. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.7.9 GMP savings resulting from a lower actual project cost than anticipated by the CM@R remaining at the end of the project will revert to District.

2.7.10 GMP Proposal(s) Review and Approval

- 2.7.10.1 The District may request one or more GMPs from the CM@R at any time during the Design Phase or at such other times as may be beneficial to the District. It is the District's expectation that any GMP shall not exceed the District stated Project budget or the portion of the Project budget designated for that portion of the Project for which a GMP is requested.
- 2.7.10.2 The CM@R will meet with the District and Design Professional to review any and all GMP Proposal(s) and the written statement of its basis. In the event the District or Design Professional discovers inconsistencies, inaccuracies or confusion in the information presented, the CM@R will make adjustments as necessary to any or all GMP Proposals, their basis or both.
- 2.7.10.3 The CM@R's detailed construction cost estimates and any and all GMPs will be reviewed by the Design Professional and the District for reasonableness and compatibility with the District's Project and the District's budget or portions thereof. The CM@R shall provide a response to the Design Professional's and District's questions and an explanation of differences between the District's Project budget and the CM@R's construction cost estimate and any corresponding GMP. District

may require that such responses and explanations be submitted in writing. The CM@R, District and Design Professional shall engage in a mutually agreeable process in an effort to achieve clearly understood mutually acceptable GMPs.

- 2.7.10.4 In the event that any GMP, either individually or collectively, exceeds the District's Project budget, or a portion thereof, the District reserves the right to direct the CM@R (and the CM@R shall) work in conjunction with the Design Professional to assist in the re-design of the Project as necessary to meet the agreed upon program and the stated Project budget as follows:
- a) After direction from the District, the CM@R shall coordinate and cooperate with the Project Team to assist the Design Professional in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
 - b) The CM@R shall develop and provide to the District new GMPs in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
 - c) The CM@R shall analyze the Design Professional's original submittal and as altered and redrafted Construction Documents, and make recommendations to the District 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 RFQ or the CM@R's response to the contrary, the CM@R shall perform the work set forth in this section without additional compensation.

- 2.7.10.5 The District upon receipt of any GMP proposal from the CM@R, may submit the applicable GMP proposal, Plans and Specifications to a third party for review and verification.
- 2.7.10.6 If any CM@R GMP Proposal is greater than the third party estimate or if the District, for some other stated reason may desire, the District may require the CM@R to reconfirm its applicable GMP Proposal. The CM@R will accept the third party's estimate for the cost of Work as part of the applicable GMP, or present a report within seven (7) days of a written request by the District for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the District may raise. The CM@R may be requested to, or may at its own discretion, submit one or more revised GMP Proposals for consideration by the District.
- 2.7.10.7 If during the review and negotiation of any GMP Proposal design changes are required, the District will authorize and cause the Design Professional to 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 CM@R. The CM@R will promptly notify the Design Professional and District in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- 2.7.10.8 After final submission of any GMP, the District may do any of the following:
- a) Accept the CM@R original or revised GMP Proposal, if within the District's budget, without comment.
 - b) Accept the CM@R original or revised GMP Proposal that exceeds the District budget, and indicate in writing to the CM@R that the Project Budget has been increased to fund the differences.
 - c) Reject the CM@R original or revised GMP Proposal in which event, the District may terminate this contract and/or elect to not enter into a separate contract with the CM@R for the construction phase associated with the scope of Work reflected in the GMP Proposal
- 2.7.10.9 Upon acceptance by the District of any GMP, the District shall prepare and the CM@R shall execute the District's specified form of contract to reflect the applicable GMP, and the applicable GMP as approved shall become part of the Construction Services Contract. Within 10 days after execution of the Construction Services contract and prior to initiating any construction services, the CM@R shall provide to the District's Representative 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

2.8.1 There are two ways to select Subcontractors and major Suppliers prior to submission of any GMP Proposal. They are:

- a) A combination of qualifications and price derived through competitive bidding;
- b) Qualitative selection with the subsequent negotiation of a price that is reasonable, a prudent use of public funds and in the District's best interest.

Absent special circumstances documented in writing by the CM@R as set forth below, the combination of qualifications and price derived through competitive bidding process shall be used to select Subcontractors and Major Suppliers. The District has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, CM@R shall insure compliance with Arizona Revised Statutes §41-2578 as amended and A.A.C. R7-2-1116 and as they may be further modified relative to the selection of Subcontractors and Major Suppliers.

2.8.2 The District may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the CM@R 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.

2.8.2.1 A purely qualification based selection of a Subcontractor(s) or Supplier(s) should only occur prior to the submittal of any applicable GMP Proposal.

2.8.2.2 The CM@R will prepare a Subcontractor or Supplier selection plan and submit the plan to the District for approval. The CM@R shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the District with its review and recommendation.

2.8.2.3 The CM@R must receive District approval of the selected Subcontractor(s) or Supplier(s). If the CM@R is to self-perform under this alternative the CM@R must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The CM@R 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 District must approve the CM@R self-performance of any part of the work and the cost therefore prior to accepting any GMP proposal.

2.8.2.4 The CM@R will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

2.8.2.5 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the CM@R shall then prepare a report for the District'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 District's representative and shall include, among other things, the amount of each such cost. The CM@R may, at its discretion or at the request of the District's representative, request written verification of any costs selected. The CM@R shall provide an explanation of the qualifying factors for each selection.

2.8.3 In all other cases, CM@R shall select Subcontractors and Major Suppliers pursuant to the following process which includes a combination of qualifications and price derived through competitive bidding or as may otherwise be agreed in writing by the parties. CM@R shall ensure that any such process is fully compliant with the above referenced Arizona law.

- 2.8.3.1 The CM@R will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the District and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the CM@R may request approval by the District to submit less than three names. Without prior approval by the District, no change in the District-approved Subcontractors will be allowed.
- 2.8.3.2 If the CM@R desires to self-perform certain portions of the construction, it shall comply with and be subject to the requirements set forth in paragraph 2.8.2.3.
- 2.8.3.3 If the District objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the CM@R will nominate a substitute Subcontractor.
- 2.8.3.4 The CM@R will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.
- 2.8.3.5 The CM@R shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@R, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the District Representative in attendance to observe and witness the process. The CM@R will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.
- 2.8.4 Upon completion of the Subcontractor selection process, the CM@R shall submit a summary report to the District of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, compliance with Arizona law as cited in paragraph 2.8.1 and the selected Subcontractors for each category of Work.
- 2.8.5 The selected Subcontractors will provide a schedule of values, which will be used to create the overall project schedule of values.
- 2.8.6 CM@R shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.
- 2.8.7 Regardless of the selection procedure, the CM@R is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.
- 2.8.8 Regardless of the selection procedure and in any case, the CM@R is solely responsible for the cost and performance of the selected Subcontractors or Suppliers. The District's approvals under this section are not and shall not be construed to be a waiver, in part or in whole of CM@R's responsibility and obligation to perform as set forth in this Agreement or subsequent Construction Agreement or GMP and for the cost or less than the cost set forth in any GMP to which the parties agree.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The design phase services described in this Contract will be performed by CM@R in accordance with the most current update/revised, District approved, Project Schedule. Failure on the part of the CM@R to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the District.
- 3.1.1 Upon failure to adhere to the approved schedule, District may provide written notice to CM@R that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@R's receipt of such notice.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CM@R and accepted by the District (which by reference is made a part of this Contract); the District will pay the CM@R a fee not to exceed \$----- as follows:

For the basic services described in Article 2, the CM@R shall receive a fee not to exceed: \$-----

Total Contract Amount, not to exceed, \$-----

- 4.1.2 For the construction phase, the following fees or amounts are agreed between the parties and shall not exceed:
- 4.1.2.1 Contractor's fee or profit not to exceed ____% of the Cost of Work or \$_____ lump sum.
- 4.1.2.2 General Conditions shall not exceed ____% of the Cost of Work or \$_____ lump sum.

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@R for design phase services will be submitted on the District'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 CM@R and any Subconsultants will be based upon the hourly rate schedule included as Exhibit B attached hereto and made a part hereof.
- 4.2.3 The CM@R will pay all sums due Subconsultants for services and reimbursable expenses within 14

calendar days after the CM@R has received payment for those services from the District. In no event will the District pay more than 90 percent of the Contract Amount until final acceptance of all design phase services, and award of all final approved GMPs for the entire Project by District Board.

- 4.2.4 The CM@R 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 District 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 CM@R 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 District of any of its legal rights herein.
- 4.2.5 No compensation to the CM@R will be allowed contrary to Arizona law.
- 4.2.6 If any service(s) executed by the CM@R is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@R, the CM@R is to be paid for the services performed prior to the abandonment or suspension minus amounts claimed by the District for deficient performance.
- 4.2.7 All progress payments shall be made in compliance with A.A.C. R7-2-1115.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following Additional Services may be required for the successful completion of this Project. Mark-ups are not authorized. Only the reimbursables specifically identified below will be reimbursed as authorized herein. It is assumed that CM@R will provide all service necessary for the performance of this Agreement as Basic Services and that Additional Services will only be allowed and paid due to extraordinary circumstances approved by the District prior to performing and/or accruing expenses relative to any such Additional Services.
 - 4.3.1.1 If not available within the CM@R's staff, and if approved by District prior to CM@R procuring the subject services, CM@R will secure services of a qualified individual or firm to provide Drawings and Specifications reviews as required. The CM@R will forward invoices from the individual or firm to the District for payment of costs. The cost of such services will not exceed an amount to be set by the District at the time of District's approval without further written approval of the District.
 - 4.3.1.2 If approved by the District prior to CM@R procuring the subject services, the CM@R will secure the services of a qualified cost estimating individual or firm to provide cost estimating services in addition to those required under this Contract. The CM@R will forward copies of the invoices from the individual or firm to the District with the CM@R's payment request. The cost for such service will not exceed an amount to be set by the District at the time of District's approval without further approval of the District.
 - 4.3.1.3 If approved by the District prior to CM@R procuring the subject services, the CM@R will provide services related to evaluations of and recommendations for long-lead time procurements in addition to those required under this Contract, in order to meet the Project Schedule requirements. The cost for such service will not exceed an amount to be set by the District at the time of District's approval without further approval of the District.
 - 4.3.1.4 When authorized by the District, the CM@R 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 CM@R shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed an amount to be set by the District at the time of District's approval without further approval of the District.

- (b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the Project will be reimbursed. These costs will not exceed an amount to be set by the District at the time of District's approval without further approval of the District.
- (c) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services not included in the basic services that may be requested by the District. The cost of such service will not exceed an amount to be set by the District at the time of District's approval without further approval of the District.

ARTICLE 5 - DISTRICT'S RESPONSIBILITIES

- 5.1 The District, at no cost to the CM@R, will furnish the following information:
 - 5.1.1 One copy of data the District determines pertinent to the work. However, the CM@R 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 District employee or District's representative who will serve as the District Representative during the term of this Contract. The District Representative has the authority to administer this Contract and will monitor the CM@R's compliance with all terms and conditions stated herein. All requests for information from or decisions by the District on any aspect of the work or Deliverables will be directed to the District's Representative.
- 5.2 The District additionally will:
 - 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@R for its information. The CM@R will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the District and Design Professional.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@R except for those copies whose cost has been reimbursed by the District.
 - 5.2.3 Provide the CM@R with adequate information in its possession or control regarding the District's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM@R when the District 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 District may provide written notice to CM@R that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@R's receipt of such notice.
 - 5.2.5 Notify the CM@R of changes affecting the budget allocations or schedule.

- 5.3 The District may also contract separately with a Project and/or Program Manager (PM) and delegate such matters, authority and participation as District desires. District shall inform CM@R of any such Project or Program Manager and the parameters of such PM's responsibility, authority and participation.

ARTICLE 6 – INSURANCE REQUIREMENTS

The CM@R and subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM@R, its agents, representatives, employees, subconsultants, subcontractors and such other related parties.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The District in no way warrants that the minimum limits contained herein are sufficient to protect the CM@R from liabilities that might arise out of the performance of the work under this Contract by the CM@R, his agents, representative, employees, or subconsultants. CM@R is free to purchase such additional insurance as may be determined necessary.

6.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 6.1.1 CM@R will provide coverage at least as broad and with limits of liability not less than those stated below.

6.1.1.1 **Commercial General Liability-Occurrence Form**

Policy shall include bodily injury, property damage, direct operations, sublet work, completed operations, sexual predator coverage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000
Maximum Deductible	\$2,000

- a. The policy shall be endorsed to include the following additional insured language: "The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R".

6.1.1.2 **Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$2,000,000
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- a. The policy shall be endorsed to include the following additional insured language: "The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R", including automobiles owned, leased or hired or borrowed by the CM@R".

6.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- a. Policy shall contain waiver of subrogation against the District.

6.2 ADDITIONAL INSURANCE REQUIREMENTS:

The policies shall include, or be endorsed to include the following provisions:

- 6.2.1 On insurance policies where the District is named as additional insured, the District shall be an additional insured to the full limits of liability purchased by the CM@R even if those limits of liability are in excess of those required by this Contract.
- 6.2.2 The CM@R's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 6.2.3 Coverage provided by the CM@R shall not be limited to the liability assumed under the indemnification provisions of this Contract.

6.3 SUBCONSULTANT INSURANCE

- 6.3.1 CM@R's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@R, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

6.4 NOTICE OF CANCELLATION

- 6.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the District. Such notice shall be sent by certified mail, return receipt requested and sent directly to the District's named District Representative at:

Paloma Elementary School District No. 94
Address: 38739 W Interstate-8
Gila Bend, AZ 85337
Phone: (928) 683-2588
Fax: (928) 683-2083

6.5 ACCEPTABILITY OF INSURERS

- 6.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona, and with an "A.M. Best" rating of not less than B+ VI. The District in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@R from potential insurer insolvency.

6.6 VERIFICATION OF COVERAGE

- 6.6.1 The CM@R will furnish the District, Certificates of Insurance (ACORD form or equivalent approved by the District) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 6.6.2 All certificates and endorsements are to be received and approved by the District 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 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.
- 6.6.3 All certificates required by this Contract will be sent directly to the District representative assigned to this Project. The District project/contract number and project description shall be noted on the certificates of insurance. The District reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE DISTRICT'S RISK MANAGEMENT DIVISION.**

6.7 APPROVAL

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

ARTICLE 7 – CONTRACT CONDITIONS

7.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 7.1.1 District 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 District and are to be delivered to the District Representative before the final payment is made to the CM@R. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@R, which consent the CM@R will not unreasonably withhold, the District agrees to hold the CM@R harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the District's alteration, modification or adaptation of the Project Documents.
- 7.1.2 CM@R 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 CM@R, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@R.
- 7.1.3 License to District for Reasonable Use: The CM@R hereby grants, and will require its Subconsultants to grant, a license to the District, 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 District to alter or modify the Project Documents, then paragraph 7.1.1 applies.
- 7.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@R and its Subconsultants will endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Contract.

7.2 COMPLETENESS AND ACCURACY OF CM@R'S WORK

The CM@R 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 District as a result of additional construction cost caused by willful or negligent errors, omissions or acts shall be chargeable to the CM@R to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@R in Arizona, at the site of the Work, would exercise under similar conditions. The fact that the District has accepted or approved the CM@R's work or Deliverables will in no way relieve the CM@R 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 District. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the design architect.

7.3 ALTERATION IN CHARACTER OF WORK

- 7.3.1 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 Schedule, the work or Deliverable will nonetheless be performed as directed by the District. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the District and the CM@R. Such Change Order or Amendment will not be effective until approved by the District.
- 7.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@R may accordingly be adjusted by mutual agreement of the contracting parties.
- 7.3.3 No claim for extra work done or materials furnished by the CM@R will be allowed by the District except as provided herein, nor will the CM@R do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing by the District. Work or material(s) furnished by the CM@R without such prior written authorization will be at the CM@R's sole jeopardy, cost, and expense, and the CM@R hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

7.4 DATA CONFIDENTIALITY

- 7.4.1 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 CM@R in the performance of this Contract.
- 7.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@R in connection with the CM@R's performance of this Contract is confidential and proprietary information belonging to the District.
- 7.4.3 The CM@R will not divulge data to any third party without prior written consent of the District. The CM@R 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:
 - 7.4.3.1 Data which was known to the CM@R prior to its performance under this Contract unless such data was acquired in connection with work performed for the District;
 - 7.4.3.2 Data which was acquired by the CM@R in its performance under this Contract and which was disclosed to the CM@R by a third party, who to the best of the CM@R's knowledge and belief, had

the legal right to make such disclosure and the CM@R is not otherwise required to hold such data in confidence; or

7.4.3.3 Data, which is required to be disclosed by the CM@R by virtue of law, regulation, or court.

7.4.4 In the event the CM@R is required or requested to disclose data to a third party, or any other information to which the CM@R became privy as a result of any other contract with the District, the CM@R will first notify the District as set forth in this Article of the request or demand for the data. The CM@R will timely give the District sufficient facts, such that the District can have a meaningful opportunity to either first give its consent or take such action that the District may deem appropriate to protect such data or other information from disclosure.

7.4.5 The CM@R, 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 District, will promptly deliver, as set forth in this section, a copy of all data to the District. All data will continue to be subject to the confidentiality agreements of this Contract.

7.4.6 The CM@R assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the District if any of the provisions of this section are violated by the CM@R, 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.

7.5 PROJECT STAFFING

7.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@R will submit to the District, an organization chart for the CM@R staff and Subconsultants and detailed resumes of key personnel listed in its response to the District'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 District hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@R desires to change such key personnel from performing such services under this Contract, the CM@R will submit the qualifications of the proposed substituted personnel to the District for prior approval. Key personnel will include, but are not limited to, principal-in-charge, District Representative, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

7.5.2 The CM@R will maintain an adequate number of competent and qualified persons, as determined by the District, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the District objects, with reasonable cause, to any of the CM@R's staff, the CM@R will take prompt corrective action acceptable to the District and, if required, remove such personnel from the Project and replace with new personnel acceptable to the District.

7.5.3 CM@R shall take all steps necessary to ensure that all persons working on their behalf or for whom they are responsible are appropriate for work in an educational environment and pose no threat to the health, safety and welfare of District's students and staff.

7.6 INDEPENDENT CONTRACTOR

7.6.1 The CM@R is and will be an independent contractor and whatever measure of control the District exercises over the work or any 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 District the right to direct the CM@R as to the details of accomplishing the work or any Deliverable. These results will comply with all applicable laws and ordinances.

7.7 SUBCONSULTANTS

- 7.7.1 Prior to beginning the work or any Deliverable, the CM@R will furnish the District for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the District.

7.8 TERMINATION

- 7.8.1 The District and the CM@R hereby agree to the full performance of the covenants contained herein, except that the District 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 CM@R.
- 7.8.2 In the event the District abandons any or all of the services or any part of the services as herein provided, the District will so notify the CM@R in writing, and the CM@R 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.
- 7.8.3 The CM@R, upon such termination or abandonment, will promptly deliver to the District all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the District.
- 7.8.4 The CM@R will appraise the work completed and submit an appraisal to the District for evaluation. The District will have the right to inspect the CM@R's work or Deliverables to appraise the work completed.
- 7.8.5 The CM@R 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. In no event shall claims be made for nor shall the District pay any amounts for lost profit, lost opportunity and/or related claims. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CM@R and the District. If there is no mutual agreement, the final determination will be made in accordance with paragraph 7.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 7.3, "Alteration in Character of Work". The District will make the final payment within sixty Days after the CM@R has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

7.9 DISPUTES

- 7.9.1 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, CM@R and District 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.
- 7.9.2 CM@R and District will first attempt to resolve disputes or disagreements at the field level through discussions between CM@R's Representative and District's Representative, or their designee(s).
- 7.9.3 If a dispute or disagreement cannot be resolved through field level discussions, CM@R's Representative and District's Representative, upon the request of either party, shall meet in a separately scheduled formal meeting, 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 Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the Representatives so agree other persons or parties may participate in this meeting.

7.9.4 For any disputes not resolved pursuant to the foregoing provisions, the following procedures shall apply:

7.9.4.1 In signing this Agreement, CM@R agrees that any cause CM@R may have against the District and its Governing Board arising in relation to this Procurement and Project and Agreement, including but not limited to, contract claims and controversies, including claims related to assignees of the CM@R, shall be resolved exclusively through the procedures of the Arizona Education Procurement Code, A.A.C. R7-2-1001, et seq. and A.A.C. R7-2-1101, et seq., including but not limited to, A.A.C. R7-2-1141 through 1159 and R7-2-1181 through 1185.

7.9.4.2 Should this procedure be found to be void or otherwise barred by law, the provisions set forth in A.A.C. R7-2-1155 through R7-2-1157 shall be required and shall be a condition precedent for the further prosecution of any such claim.

7.9.4.3 The parties agree that the Design or other Construction Professionals and their consultants, Subcontractor, Suppliers or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

7.10 DUTY TO CONTINUE PERFORMANCE

7.10.1 Unless provided to the contrary in the Contract Documents, CM@R shall continue to perform the Work and District shall continue to satisfy its payment obligations to CM@R, pending the final resolution of any dispute or disagreement between CM@R and District.

7.11 REPRESENTATIVES OF THE PARTIES

7.11.1 **District's Representative** District designates the individual listed below or his designee as its Representative ("District's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 7.9:

Paloma Elementary School District No. 94
Address: 38739 W Interstate-8
Gila Bend, AZ 85337
Phone: (928) 683-2588
Fax: (928) 683-2083

7.11.2 **CM@R's Representative** CM@R designates the individual listed below as its Representative ("CM@R's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 7.9:

_____, Construction
_____, President
Address:
Phone:
Fax:

7.12 WITHHOLDING PAYMENT

7.12.1 The District reserves the right to withhold funds from the District's progress payments up to the amount equal to the claims the District may have against the CM@R, until such time that a settlement on those claims has been reached. Should the District withhold payments or portions of payments pursuant to this paragraph they shall do so in compliance with A.R.S. § 34-609(B)(2-7).

7.13 RECORDS/AUDIT

- 7.13.1 Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and CM@R 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 District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The District reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data.
- 7.13.2 The CM@R will include a provision similar to paragraph 7.13.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the District, 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 District 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 District to audit their records to verify the accuracy and appropriateness of pricing data.

7.14 INDEMNIFICATION

- 7.14.1 The CM@R agrees to defend, indemnify and hold harmless the District, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the work or Deliverables done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CM@R to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@R will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies.

7.15 NOTICES

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

To CM@R	_____, Construction _____, President Address: Phone: Fax:
To District:	Paloma Elementary School District No. 94 Address: 38739 W Interstate-8 Gila Bend, AZ 85337 Phone: (928) 683-2588 Fax: (928) 683-2083

Copy to: District Representative	_____ School District No. ____ Address: Phone: Fax:
Copy to: Design Professional (if applicable)	
Copy to: Project Manager (if applicable)	

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.

7.16 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

- 7.16.1 The CM@R will comply with the provisions of this Contract, and applicable laws pertaining to equal opportunity and non-discrimination pertaining to discrimination and accepting applications or hiring employees. The CM@R will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@R will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@R further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@R.

7.17 COMPLIANCE WITH FEDERAL LAWS

- 7.17.1 **This Project is funded in total or part with federal funds. Therefore, CM@R and all subcontractors, vendors, materialmen and agents shall strictly comply with all applicable federal laws, regulations, terms and conditions including Form FHWA-1273 and specifications and supplements thereto, attached hereto and made a part hereof as Exhibit E. Any violation of the foregoing shall be a material substantial breach of this Contract.**
- 7.17.2 The CM@R 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 to CM@R. The CM@R agrees to comply with these and all laws in performing this Contract and to permit the District to verify such compliance.

7.18 CONFLICT OF INTEREST

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

Paloma Elementary School District No. 94

Address: 38739 West Interstate-8
Gila Bend, AZ 85337
Phone: (928) 683-2588
Fax: (928) 683-2083

7.18.2 Actions considered to be adverse to the District 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 District;
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the District; and
- (c) Using data to produce income for the CM@R or its employees independently of performing the services under this Contract, without the prior written consent of the District.

7.18.3 The CM@R represents that except for those persons, entities and projects previously identified in writing to the District, the services to be performed by the CM@R 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 District.

7.18.4 The CM@R'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.

7.19 CONTRACTOR'S LICENSE

7.19.1 Prior to award of the Contract, the CM@R must provide to the District Representative, its Contractor's License Classification and number and its Federal Tax I.D. number.

7.20 SUCCESSORS AND ASSIGNS

7.20.1 The District and the CM@R 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 District nor the CM@R will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the District.

7.21 FORCE MAJEURE

7.21.1 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.

7.22 COVENANT AGAINST CONTINGENT FEES

7.22.1 The CM@R 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 District Board, or any employee of the District has any interest, financially, or otherwise, in the firm. The District 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.

7.23 NON-WAIVER PROVISION

- 7.23.1 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.

7.24 JURISDICTION

- 7.24.1 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, in the Arizona County in which the Work is to be constructed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

7.25 SURVIVAL

- 7.25.1 All warranties, representations and indemnifications by the CM@R will survive the completion or termination of this Contract.

7.26 MODIFICATION

- 7.26.1 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.

7.27 SEVERABILITY

- 7.27.1 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.

7.28 INTEGRATION

- 7.28.1 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.

7.29 TIME IS OF THE ESSENCE

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

7.30 PERIOD OF SERVICES

- 7.30.1 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 District, 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 District holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (local time) on the day of performance.

7.31 THIRD PARTY BENEFICIARY

- 7.31.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the District and the CM@R. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the District and the CM@R and not for the benefit of any other party.

7.32 COOPERATION AND FURTHER DOCUMENTATION

- 7.32.1 The CM@R agrees to provide the District such other duly executed documents as may be reasonably requested by the District to implement the intent of this Contract.

7.33 CONFLICT IN LANGUAGE

- 7.33.1 All work or Deliverables performed will conform to all applicable District 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.

7.34 DISTRICT'S RIGHT OF CANCELLATION

- 7.34.1 All parties hereto acknowledge that this Contract is subject to cancellation pursuant to applicable provisions of Arizona Revised Statutes and the Arizona Administrative Code.

7.35 CONTRACTOR'S CERTIFICATION

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

7.36 CONTRACTOR'S COMPLIANCE WITH IMMIGRATION LAWS

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the District upon request. These warranties shall remain in effect through the term of the contract.

The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

7.37 CONTRACTOR'S WARRANTY OF BACKGROUND CHECKS

Contractor, by its signature below, warrants and certifies that it has reviewed A.R.S. § 15-512 including but not limited to sub-paragraph H, and further warrants that it shall comply and cause any employee, subcontractor or employee of subcontractor or others for whom Contractor is responsible (hereinafter collectively referred to as "Contractor and agents") to comply with A.R.S. § 15-512. Contractor and agents shall each obtain and possess a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 of the Arizona Revised Code. Contractor and agents' failure to comply with this provision bars them from providing services on District property, constitutes a substantial breach of and voids this contract and further is per se grounds for termination of this contract for cause.

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

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

Paloma Elementary School District No. 94,
an Arizona School District

_____ Construction
an Arizona Corporation

By: _____
Kristin Turner, Superintendent

By: _____
_____, President

DRAFT

EXHIBIT A – 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:

CM@R Design Phase and Construction Services as necessary and/or as set forth in the Contract Documents for the construction of a [NAME OF PROJECT] to be located in Gila Bend, Arizona, all as may be more fully set forth in the documents provided pursuant to the Contracts herein.

The full street or physical address of the Project is:

DRAFT

EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@R and its Subconsultants follow and are based on the approved proposal submitted to the District on -----DATE-----, 2014.

LIST OF CLASSIFICATIONS:

Classification

Direct Labor Rate

Total Labor Rate

DRAFT

EXHIBIT C – NOT USED

DRAFT

EXHIBIT D - SUBMITTAL REQUIREMENTS FOR GMPs

THE FOLLOWING APPLIES TO SUBMITTAL OF ANY GMP.

GMP submittal, one copy for review.

Eight copies will be requested by the District prior to contract execution. The eight copies will be punched as required for contract preparation.

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 Schedule
-
1. Scope of work will consist of a brief description of the work to be performed by CM@R and major points that the CM@R and the District must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
 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 conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #:
PROJECT NAME:

DATE:

GMP Summary					AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$	
B.	CM@R's Contingency				\$	
INDIRECT COSTS				RATE		
C.	Construction Fee			%		\$
D.	General Conditions			%		\$
	D1	Payment and Performance Bond		\$	%	
	D2	Insurance		\$	%	
E.	Sales Taxes			%		\$
				F. TOTAL GMP		\$
				G. Owner's Contingency		\$
				H. Contract Amount		\$

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 District.)

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@R'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. The plans used for the GMP must be date stamped and signed by CM@R, Design Consultant, and District Representative using the format below.

Plans Used For Preparation of GMP No.

CM@R

Date

Design Consultant

Date

District Representative

Date

5. A list of the clarifications and assumptions made by the CM@R in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.
7. MBE/WBE/SBE requirements section addresses the goals set for the project and the CM@R current status on meeting the project goals. The Utilization form and the Letter of Intent must be attached when the contractor selection has been made prior to final GMP submittal.

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.

Final GMP submittal will consist of the following:

1. 8 Copies of the GMP (perforated as requested by District) Velo or 3 hole punched.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CM@R and District Representative).

For questions regarding the submittal requirements, please contact District at (928) 683-2588.

Paloma Elementary School District No. 94
Gila Bend, Arizona

PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94
ARCHITECTURAL AND ENGINEERING SERVICES

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES

GMP NO.1

PROJECT NO. 14-04-18

**Demolition and Replacement of Space at Paloma Elementary School's Kiser
Elementary**

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PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94, GILA BEND, ARIZONA

PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94

ARCHITECTURAL AND ENGINEERING SERVICES

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES

PROJECT NO. 14-04-18

THIS AGREEMENT, made and entered by and between Paloma Elementary School District No. 94, an Arizona School District, hereinafter designated the "District" and _____, hereinafter designated the "Construction Manager at Risk" or "CM@R."

RECITALS

- A.** The Superintendent of the District is authorized and empowered by action of the District Governing Board, hereinafter "Board," in open public meeting, to execute this contract for professional services and related construction services.
- B.** The District intends to construct the _____, hereinafter referred to as the "Project," as more fully described in Exhibit A attached. The full street or physical address of the Project is: _____. The full street or physical address of the Project shall be included in each subcontract of CM@R and/or each subcontractor at any level.
- C.** To undertake the construction administration of said project the District has entered into a contract with _____ ("Architects") hereinafter referred to as the "Design Professional."
- D.** The CM@R has represented to the District the ability to provide construction management services and to construct the Project and based on this representation the District engages the CM@R to provide these services and construct the Project.
- E.** An Agreement has been executed previously between District and CM@R to perform design phase services relative to this Project. That Agreement and the services identified therein shall continue during the duration of this contract.

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

Article 1 - Definitions

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

"Change Directive" A written order prepared and signed by District, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Change Order" A type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by District, CM@R and other parties as may be required or appropriate, agreeing to changes to a GMP. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

"Construction Documents" The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

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

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

"CM@R's Contingency" A fund to cover cost growth during the project used at the discretion of the CM@R usually for costs that result from project circumstances. The amount of the CM@R's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@R's Contingency is described in Subdivision 5.1.2.3.

"CM@R's Representative" The person designated in Subdivision 8.3.2.

"Contract Documents" The following items and documents in descending order of precedence executed by the District and the CM@R: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications; (v) the CM@R Design Phase Services Agreement; (vi) Request for Qualifications No. 14-04-18 issued by the District relative to the Project.

"Contract Price" The amount or amounts set forth in Article 5.

"Contract Time" The Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

"Critical Path" The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will delay achieving Substantial Completion.

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

"Design Phase Contract" The agreement between the District and CM@R for the Services provided by the CM@R during the design phase and as may be subsequently needed which may include, but is not limited to, the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, MBE/WBE/SBE utilization, subcontractor bid phase services and GMP preparation and other services set forth in the agreement or reasonably inferable therefrom.

"Design Professional" The qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.

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

"District ("Owner" or "OWNER")" The District, an Arizona School District, with whom CM@R has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

"District's Representative" The person designated in Subdivision 8.3.1.

"Final Acceptance/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. See Section 4.2.

"Float" The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" includes, but is not limited to the following types of costs for the CM@R during the construction phase: (i) payroll costs for project manager or CM@R for managerial 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 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 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 CM@R or Subcontractors.

"Guaranteed Maximum Price" or "GMP" The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@R's Contingency.

"GMP No. 1" means the first GMP.

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

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

"Notice to Proceed" or "NTP" The directive issued by the District, authorizing the CM@R to start Work.

"Owner's Contingency" A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner's contingency will be set solely by the Owner and will be in addition to the project costs included in the CM@R's GMP packages. Use and management of the Owner's contingency is described in Division 5.1.3.

"Performance Period" The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.

"Payment Request" Requests by the CM@R for progress or final payments for Work which must be submitted in accordance with Article 7 on District approved forms with supporting documentation as required by the Contract Documents and/or District.

"Product Data" Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@R to illustrate materials or equipment for some portion of the Work.

"Project" 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.

"Project Record Documents" The documents created pursuant to Section 2.11.

"Samples" Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

"Shop Drawings" Drawings, diagrams, schedules and other data specially prepared for the Work by the CM@R 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.

"Subcontractor" An individual or firm having a direct contract with the CM@R or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the construction phase Work for which the CM@R is responsible.

"Substantial Completion" When the Work, or an agreed upon portion of the Work, is sufficiently complete so that District can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by District Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the District or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the District; (vi) draft O&M manuals and record documents reviewed and accepted by the District; (vii) District operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work completed; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to Section 2.5.3.

"Supplier" A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@R or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@R 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 - CM@R's Services and Responsibilities

- 2.0** The CM@R shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the District. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@R in Arizona, in the city, town or county where the Work is to be constructed. The Work shall be to the satisfaction of the District and strictly pursuant to and in conformity with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.
- 2.1** Subcontractor and Major Supplier selections shall be made in conformance with Article 2.8 of the Parties' related Design Phase Services contract which is adopted by reference as if wholly rewritten herein and A.R.S § 41-2578 as amended. The CM@R shall obtain a minimum of three bids for all areas of construction, unless otherwise approved by the District representative in writing.
- 2.2** CM@R's Representative shall be reasonably available to District and shall have the necessary expertise and experience required to supervise the Work. CM@R's Representative shall communicate regularly with District but not less than once a week and shall be vested with the authority to act on behalf of CM@R. CM@R's Representative may be replaced only with the written consent of District.
- 2.3** The CM@R shall make best efforts to use MBE, WBE, SBE and/or LOCAL contractors and suppliers.
- 2.4 Government Approvals and Permits**
- 2.4.1** Unless otherwise provided, CM@R shall obtain or assist the District to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@R is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**
- 2.4.2** Copies of these permits and notices must be provided to the District's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the District's Representative. This provision does not constitute an assumption by the District of an obligation of any kind for violation of said permit or notice requirements.
- 2.4.3** District shall be responsible for permit(s) and fees for building and demolition permits. District will also pay review fees for grading and drainage, water, sewer, and landscaping. District shall also pay for utility design fees for permanent services.
- 2.4.4** CM@R shall be responsible for all other permits and review fees not specifically listed in Section 2.4.3 above.
- 2.4.5** CM@R is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@R's responsibility.
- 2.5 Pre-construction Conference**
- 2.5.1** Prior to the commencement of any Work, the District's Representative will schedule a Pre-construction conference.

- 2.5.2** The purpose of this conference is to establish a working relationship between the CM@R, utility firms, various District agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required and emergency telephone numbers for all representatives involved in the course of construction.
- 2.5.3** The Notice to Proceed date will be concurred to by the parties or set by the District. At or after the meeting and upon receipt of a signed contract and delivery of the required bonds and insurance in a District approved format or at such other time as the District may elect, a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed and/or as set forth in Article 1 herein. Failure by the CM@R to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.
- 2.5.4** [Section left intentionally blank.]
- 2.5.5** The CM@R shall provide a schedule of values based on the categories used in the buy out of the Work but not greater than the approved GMP and which shall identify the CM@R's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.
- 2.5.6** Minimum attendance at the Preconstruction conference held by the CM@R shall be the CM@R's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, the CM@R's safety officer and the District.
- 2.6 Control of the Work**
- 2.6.1** Unless otherwise provided in the Contract Documents to be the responsibility of District or a separate contractor, CM@R shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@R to complete the Work consistent with the Contract Documents.
- 2.6.2** CM@R shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@R shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.6.3** CM@R or the CM@R's Superintendent shall be present at the Site at all times that construction activities are taking place.
- 2.6.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.6.3.2** In the event of noncompliance with this Division, the District may require the CM@R to stop or suspend the Work in whole or in part.
- 2.6.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@R's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
- 2.6.5** Before ordering materials or doing work, the CM@R and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the

District for resolution before proceeding with the work.

- 2.6.6** The CM@R shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@R with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the District immediately.
- 2.6.7** The CM@R shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.
- 2.6.8** Any person employed by the CM@R or any Subcontractor who, in the opinion of the District, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the educational setting of the worksite, shall, at the written request of the District, be removed from the Work by CM@R or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the District. The CM@R or Subcontractor shall keep the District harmless from damages or claims which may occur in the enforcement of this Section.
- 2.6.9** CM@R assumes responsibility to District for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between District and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.6.10** CM@R shall coordinate the activities of all Subcontractors. If District performs other work on the Project or at the Site with separate contractors under District's control, CM@R agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7 Control of the Work Site

- 2.7.1** Throughout all phases of construction, including suspension of Work, CM@R shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@R to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@R shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit District to occupy the Project or a portion of the Project for its intended use.
- 2.7.2** CM@R shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the District and in accordance with the requirements of any applicable Rules and Regulations or such other specifications as the parties may agree in writing.
- 2.7.3** CM@R shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@R shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.7.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@R. When equipment is no longer required for the Work, it shall be removed promptly from the Site.
- 2.7.5** Protection of the Work, the construction site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@R.

2.8 Shop Drawings, Product Data and Samples

- 2.8.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@R proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.8.2** The CM@R shall review, approve, verify, and submit to the District five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the District or of separate contractors. Submittals made by the CM@R, which are not required by the Contract Documents, may be returned without action.
- 2.8.3** The CM@R shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the District. Such Work shall be in accordance with approved submittals.
- 2.8.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@R represents that the CM@R has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.8.5** The CM@R shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the District's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@R has specifically informed the District in writing of such deviation at the time of submittal and the District has given written approval to the specific deviation. The CM@R shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the District's approval thereof.
- 2.8.6** The CM@R shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the District on previous submittals.
- 2.8.7** Informational submittals upon which the District is not expected to take responsive action may be so identified in the Contract Documents.
- 2.8.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.9 Quality Control, Testing and Inspection

- 2.9.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- 2.9.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the District. Any material rejected by the District shall be removed immediately and replaced in an acceptable manner.
- 2.9.3** The procedures and methods used to sample and test material will be determined by the District. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.
- 2.9.4** The District will select a pre-qualified Independent Testing Laboratory and will pay for initial District Acceptance Testing.

- 2.9.4.1** When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the CM@R. CM@R's Contingency cannot be utilized for the cost of re-testing.
- 2.9.4.2** When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.9.5** The CM@R will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.9.6** At the option of the District, materials may be approved at the source of supply before delivery is started.
- 2.9.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@R, unless otherwise provided in the Contract Documents.
- 2.9.8** CM@R's convenience and quality control testing and inspections shall be the sole responsibility of the CM@R and paid by the CM@R.
- 2.10 Trade Names and Substitutions.**
- 2.10.1** Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, may be permitted, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:
- 2.10.2** The substitution shall be submitted by CM@R in writing to the District.
- 2.10.3** The CM@R shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.10.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.10.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.10.6** The CM@R if requested by the District shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.10.7** The District will make the final decision and will notify the CM@R in writing as to whether the substitution has been accepted or rejected.
- 2.10.8** If the District does not respond in a timely manner, the CM@R shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.11 Project Record Documents

2.11.1 During the construction period, the CM@R shall maintain at the jobsite a set of redline, blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes. CM@R contractor will certify that these documents are up to date when they submit their monthly pay application. The CM@R shall also:

2.11.1.1 Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
- Details not on original Contract Drawings.
- Similar deviations, variations and modifications.

2.11.1.2 Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

2.11.1.3 Mark Project Record Drawings sets with red erasable colored pencil.

2.11.1.4 Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

2.11.1.5 As a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the District Representative for review and comment.

2.11.2. Upon receipt of the reviewed Project Record Drawings from the District, the CM@R shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the District within 14 Days:

2.11.2.1 A complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with District CADD technology. The Design Professional will provide files of the original Construction Documents to the CM@R for the use of preparing these final Project Record Drawings or the CM@R may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2.11.2.2 A complete set of reproducible mylars from the final AutoCAD drawings.

2.11.2.3 The original copy of the Project Record Drawings (redline mark-ups).

2.12 Project Safety

- 2.12.1.** CM@R recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.12.2.** CM@R assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.12.3.** CM@R shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@R's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.12.4.** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@R's personnel, Subcontractors and others as applicable. CM@R shall provide the District copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.
- 2.12.5.** CM@R and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any District-specific safety requirements set forth in the Contract Documents, provided that such District-specific requirements do not violate any applicable Legal Requirement.
- 2.12.6.** CM@R will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to District's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.12.7.** CM@R's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.13 Warranty

- 2.13.1.** CM@R warrants to District that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.13.2.** CM@R's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@R or anyone for whose acts CM@R may be responsible and/or liable.
- 2.13.3.** CM@R's warranty obligation shall be for two years, except for such greater period as may be required by the technical specifications.
- 2.13.4.** Nothing in this warranty is intended to limit any manufacturer's warranty which provides District with greater warranty rights than set forth in this Section or the Contract Documents. CM@R will provide District with all manufacturers' warranties upon Substantial Completion.

2.13.5 Nothing in this warranty is intended to limit any other remedy at law that may be available to the District.

2.14 Correction of Defective Work

2.14.1. CM@R agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.13 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the District, shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.14.2. During the Work, CM@R shall take meaningful steps to commence correction of such nonconforming Work as notified by the District. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps during the Work, District, in addition to any other remedies provided under the Contract Documents, may provide CM@R with written notice that District will commence correction of such nonconforming Work with its own forces.

2.14.3. CM@R shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.13 above, within seven days of receipt of written notice from District. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@R fails to commence the necessary steps within such seven day period, District, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide CM@R with written notice that District will commence correction of such nonconforming Work with its own forces.

2.14.4. If District does perform such corrective Work, CM@R shall be responsible for all reasonable costs incurred by District in performing such correction.

2.14.5. In the event nonconforming Work creates an emergency requiring an immediate response, the CM@R will respond and initiate corrections within twenty-four hours.

2.14.6. The two year period referenced in Division 2.14.1 above applies only to CM@R's obligation to correct nonconforming Work as provided in this section and is not intended to constitute a period of limitations for any other rights or remedies District may have regarding CM@R's obligations under the Contract Documents or as may be allowed by law.

Article 3 - District's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1** District shall, throughout the performance of the Work, cooperate with CM@R and perform its responsibilities, obligations and services in a timely manner to facilitate CM@R's timely and efficient performance of the Work and so as not to delay or interfere with CM@R's performance of its obligations under the Contract Documents.
- 3.1.2** District shall furnish at the CM@R's request, at no cost to the CM@R, a CADD file of the Construction Documents in AutoCAD format compatible with District Engineering and Architectural Services Department CADD technology.

3.2 District's Representative

- 3.2.1** District's Representative or designee shall be responsible for providing District-supplied information and approvals in a timely manner to permit CM@R to fulfill its obligations under the Contract Documents.
- 3.2.2** District's Representative or designee shall also provide CM@R with prompt notice if it observes any failure on the part of CM@R to fulfill its contractual obligations, including any noted default or defect in the project or non-conformance with the drawings and specifications.
- 3.2.3** The District may utilize field inspectors to assist the District's Representative during construction in observing performance of the CM@R.
 - 3.2.3.1** The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
 - 3.2.3.2** The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CM@R.
 - 3.2.3.3** The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the District's Representative.
 - 3.2.3.4** The furnishing of such services for the District shall not make the District responsible for or give the District control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for the CM@R's failure to perform the work in accordance with Contract Documents.
 - 3.2.3.5** The District Representative is Kristin Turner, the Superintendent or her designee or successor.

3.3 Design Professional Services

- 3.3.1** The District may contract separately with one or more Design and/or other Construction Professionals (DCP) to provide construction administration of the project. The CM@R shall not have any right to limit or restrict any contract modifications that are mutually acceptable to the DCP.
- 3.3.2** The District may contract with the DCP to provide some or all of the following services during the performance of the Work.
 - 3.3.2.1** Provide oversight of the Work. The District and CM@R shall endeavor to communicate through the DCP. Communications by and with the DCP 's consultants shall be through the DCP.

- 3.3.2.2** The DCP shall conduct site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The DCP will keep the District informed of progress of the Work, and will endeavor to guard the District against defects and deficiencies in the Work. The DCP may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.9.
- 3.3.2.3** The DCP shall review and recommend approval of Payment Requests.
- 3.3.2.4** The DCP shall review and approve or take other appropriate action upon the CM@R's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.8.
- 3.3.2.5** The DCSP shall interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the District or CM@R. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** The DCP shall prepare Change Orders/Change Directive, and may authorize minor changes in the Work as provided in Article 6.
- 3.3.2.7** The DCP shall conduct inspections to determine Substantial Completion and Final Acceptance/Completion.
- 3.3.2.8** The DCP shall receive and forward to the District for the District's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@R.
- 3.4** **District's Separate Contractors.** District is responsible for all work performed on the Project or at the Site by separate contractors under District's control. District shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@R in order to enable CM@R to timely complete the Work consistent with the Contract Documents.
- 3.5** **Permit Review and Inspections.**
- 3.5.1** If requested by the CM@R, the District's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

Article 4 - Contract Time

4.0. Contract Time.

- 4.0.1.** Contract Time shall start with the Notice to Proceed for GMP No. 1, include a date for Substantial Completion and end with Final Acceptance/Completion.
- 4.0.2.** Each GMP will establish a separate NTP date, Substantial Completion date, Performance Period and Contract Time for that GMP. The Substantial Completion dates and/or Performance Periods may be sequential or may run concurrently. The Performance Period for GMP No. 1 shall be ----- Days starting with the NTP.
- 4.0.3.** CM@R agrees that it will commence performance of the Work and achieve Substantial Completion, Final Acceptance/Completion, the Performance Periods and Contract Time on or before the dates set.
- 4.0.4.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance Article 6.
- 4.0.5.** Time is of the essence, for times and related matters set forth in Article 4 and the rest of this agreement.

4.1. Substantial Completion

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1, and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying the District in accordance to Division 4.1.3 below, the CM@R shall inspect the Work and prepare and submit to the District a comprehensive list of items to be completed or corrected. The CM@R shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@R to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CM@R shall notify District when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of District's receipt of CM@R's notice, District and CM@R will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, District shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days of the Substantial Completion date and before Final Acceptance/Completion, (iii) provisions (to the extent not already provided in the Contract Documents) establishing District's and CM@R's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance/Completion, (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion, and (v) the date for Final Acceptance/Completion.
- 4.1.6.** District, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.1.5 above, (ii) CM@R and District have obtained the consent of their sureties and insurers, and to the extent applicable, the

appropriate government authorities having jurisdiction over the Project, and (iii) District and CM@R agree that District's use or occupancy will not interfere with CM@R's completion of the remaining Work.

4.2. Final Acceptance/Completion. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, District and CM@R will jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.1.5. Upon the District's determination that Final Completion has been achieved, the District will issue a Final Acceptance/Completion Letter and payment pursuant to Section 7.5.

4.3. Liquidated Damages.

4.3.1. CM@R understands that if Substantial Completion is not attained within the Contract Time as adjusted, District will suffer damages which are difficult to determine and accurately specify. CM@R agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@R shall pay the District (\$1,500.00) as liquidated damages for each calendar Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

4.3.2. CM@R understands that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, District will suffer damages which are difficult to determine and accurately specify. CM@R agrees that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, CM@R shall pay the District (\$1,000.00) as liquidated damages for each calendar Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

4.4. Incentive Bonuses.

4.4.1. There are no incentive bonuses for this project unless otherwise agreed in writing by the parties.

4.5. Project Schedule

4.5.1. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

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

4.5.3. An updated Project Schedule shall be submitted monthly to the District as part of the Payment Request.

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

4.5.3.2. With each schedule submittal the CM@R shall include a transmittal letter including the following:

- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay

- Known or potential impact of the delay on other activities, milestones, and by the date of Substantial Completion.
 - Changes in construction sequence
 - Pending items and status thereof including but not limited to:
 - Time Extension requests
 - Other items
 - Substantial Completion date status:
 - If ahead of schedule, the number of calendar days ahead.
 - If behind schedule, the number of calendar days behind.
 - Other project or scheduling concerns
- 4.5.4.** District's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@R from compliance with the requirements of the Contract Documents or be construed as relieving the CM@R of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 4.5.5.** The Project 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.
- 4.5.5.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.5.5.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.5.5.3.** 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.
- 4.5.5.4.** The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.
- 4.5.5.5.** The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 4.5.5.6.** 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 CM@R activities.
- 4.5.5.7.** The schedule shall include a critical path activity that reflects anticipated rain and 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. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the District.
- 4.5.6.** The Project Schedule shall consider the District's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.5.7.** Float time shall be as prescribed below;
- 4.5.7.1.** The total Float within the overall schedule, is not for the exclusive use of either the District or the CM@R, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

- 4.5.7.2.** The CM@R 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 considered or granted nor delay damages considered or paid until a delay occurs which extends the Work beyond the Substantial Completion date.
- 4.5.7.3.** Since Float time within the schedule is jointly owned, it is acknowledged that District-caused delays on the Project may be offset by District-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@R, etc.). In such an event, the CM@R shall not be entitled to have considered or receive a time extension or delay damages until all District-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

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Article 5- Contract Price

- 5.0.** The CM@R agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved Guaranteed Maximum Price.
- 5.1. Contract Price.**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of \$----- for Owner's Contingency.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@R is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@R's Contingency shall revert to the District.
- 5.1.2.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
- 5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 5.1.2.3** CM@R's Contingency is an amount the CM@R may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the District for increases in General Condition Costs. CM@R's Contingency is assumed to be a direct project cost and, therefore, shall and shall be assumed to have received all markups at the time of GMP submission.
- 5.1.2.3.1** When the CM@R utilizes CM@R's Contingency funds, the CM@R shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@R shall deduct the amount of CM@R's Contingency funds used from the CM@R's Contingency line item and add the same amount to the line item on the schedule of values where the funds were used. If the CM@R's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.2.4** 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 is a not-to-exceed reimbursable amount.
- 5.1.3** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@R, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@R at the time that Owner's Contingency is used.
- 5.1.4** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
- 5.1.4.1** GMP amendments are accumulative except for contingency. The amount of contingency for each GMP amendment will be negotiated separately.
- 5.1.4.2** If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

- 5.1.5** The CM@R shall submit to the District, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this section shall be included in all contracts between the CM@R and its Subcontractors and Consultants. The District may exercise its rights under this section as often as reasonably necessary in the District's sole judgment to assure the District has a complete and accurate understanding of all Project costs.

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Article 6 - Changes to the Contract Price and Time

6.0. Delays to the Work

- 6.0.1.** If CM@R is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@R is responsible, the Contract Times for performance may be reasonably extended by Change Order.
- 6.0.2.** The CM@R shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
- 6.0.3.** By way of example, events that may entitle CM@R to an extension of the Contract Time include acts or omissions of District or anyone under District's sole control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.0.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an actual, adverse effect on the scheduled Substantial Completion.
- 6.0.5.** It is understood, however, that permitting the CM@R to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the District of any of its legal rights herein.
- 6.0.6.** In addition to CM@R's right to request a time extension for those events set forth in this Section, CM@R may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@R and District, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

6.1. Differing Site Conditions

- 6.1.1.** If CM@R encounters a Differing Site Condition, CM@R may be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@R's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.1.2.** Upon encountering a Differing Site Condition, CM@R shall provide prompt written notice to District of such condition, which notice shall not be later than five (5) days after such condition has been encountered. CM@R shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.2. Errors, Discrepancies and Omissions.

- 6.2.1.** If the CM@R observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.

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

6.3. District Requested Change in Work.

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

6.3.2. Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@R agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.3.3. The District will request a proposal for a change in Work from CM@R, and any adjustment in the Contract Price and/or Contract Times shall be made based on a mutually agreed upon cost and time.

6.4. Legal Requirements.

6.4.1. The Contract Price and/or Contract Times shall be adjusted to compensate CM@R for the effects of any changes in the Legal Requirements enacted after the date of the acceptance of the GMP, affecting the performance of the Work

6.5. Change Directives and Change Orders.

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

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

6.6. Minor Changes in the Work

6.6.1. The District has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the District and CM@R. The CM@R shall carry out such written orders promptly.

6.6.2. CM@R may make minor changes in Work, provided, however that CM@R shall promptly inform District, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@R.

6.6.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.7. Contract Price Adjustments

6.7.1. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

6.7.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

6.7.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by District; and

- 6.7.1.3.** Costs, fees and any other markups.
- 6.7.2.** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit B.
- 6.7.3.** If an increase or decrease cannot be agreed to as set forth in items 6.7.1 through .3 above and District issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@R shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4.** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to District or CM@R because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.7.5.** If District and CM@R disagree upon whether CM@R is entitled to be paid for any services required by District, or if there are any other disagreements over the scope of Work or proposed changes to the Work, District and CM@R shall resolve the disagreement pursuant to Article 8 hereof.
- 6.7.5.1.** As part of the negotiation process, CM@R shall furnish District with a good faith estimate of the costs to perform the disputed services in accordance with District's interpretations.
- 6.7.5.2.** If the parties are unable to agree and District expects the CM@R to perform the services in accordance with District's interpretations, CM@R shall proceed to perform the disputed services, conditioned upon District issuing a written order to CM@R (i) directing CM@R to proceed and (ii) specifying District's interpretation of the services that are to be performed.
- 6.7.6. Emergencies.** In any emergency affecting the safety of persons and/or property, CM@R shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

Article 7- Procedure for Payment

- 7.0.** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the District and to its satisfaction, the District agrees to pay the said CM@R the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CM@R's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below and in compliance with A.A.C. R7-2-1114 through 1115.
- 7.1. GMP Payment Request**
- 7.1.1.** At the pre-construction conference prescribed in Section 2.5, CM@R shall submit for District's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@R throughout the Work.
- 7.1.2.** At least five (5) working days prior to the date established for a Payment Request, the CM@R shall submit an updated Project Schedule and meet with the District's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3.** The Payment Request shall constitute CM@R's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to District free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- 7.1.4.** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.
- 7.1.4.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and District shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.1.4.2.** For materials and equipment stored off the Site, the District must approve the storage. The material and equipment must be stored within the County where the Work is to be constructed or as the District may otherwise approve in writing and be accessible for District's inspection. The CM@R must protect the District's interest and shall be responsible for insurance, bonding, storage and transportation to the Site.
- 7.1.4.3.** All bonds and insurance required for stored materials shall name the District as the loss payee to the extent of its interest in the stored materials.
- 7.1.5.** CM@R shall submit its payment request to District on the monthly anniversary of the construction Notice To Proceed beginning with the first month after the construction Notice To Proceed.
- 7.2. Payment of GMP**
- 7.2.1.** District shall make payment in accordance with A.A.C. R7-2-1114 – 1116. Payment will be made as set forth in the referenced provisions but in each case, less the total of payments previously made, and less amounts properly retained under Section 7.3 below or as otherwise allowed by Arizona law.
- 7.2.2.** District shall pay CM@R all amounts properly due. If District determines that CM@R is not entitled to all or part of a Payment Request, it will notify CM@R in writing within (7) days after the date Payment Request is received by the District. The notice shall indicate the specific amounts District intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@R must take to rectify District's concerns. CM@R and District will attempt to resolve District's concerns. If the parties cannot resolve such concerns, CM@R may pursue its

rights under the Contract Documents, including those under Article 8 hereof.

7.3. Retention on GMP

- 7.3.1.** All retention shall be retained and paid out pursuant to A.A.C. R7-2-1114 and other applicable Arizona law. Where the provisions of this agreement conflict with the above referenced law, the law shall control. District will retain ten percent (10%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM@R, upon request of the CM@R, and providing CM@R is making satisfactory progress on the Project, District may pay CM@R one-half (1/2) the amount retained to that point and reduce the amount subsequently retained to five percent (5%) from CM@R's subsequent Payment Requests. If, at any time the District determines satisfactory progress is not being made, the 10% retention shall be reinstated for all progress payments made under this agreement subsequent to the determination.
- 7.3.2.** In lieu of retention, the CM@R may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.
- 7.3.2.1.** CDs assigned to the District must be maintained at the District's servicing bank in the form of time deposit receipt accounts.
- 7.3.2.2.** Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the District.
- 7.3.2.3.** CDs and Securities shall be assigned exclusively for the benefit of the District pursuant to an appropriate Escrow Agreement.
- 7.3.2.4.** All substitute securities must be accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the District or the CM@R in relationship to the security assigned.
- 7.3.3.** District shall pay or substitute security shall be returned to CM@R within 60 days after Final Completion and acceptance of work under the Contract unless the District's Governing Board provides a specific written finding of reasons justifying the delay and payment of retention. However, the District may not retain any monies after 60 days which are in excess of the amount necessary to pay the expenses the Governing Board reasonably expects to incur in order to pay or discharge the expenses determined in the finding justifying the retention of monies.

7.4. Final Payment

- 7.4.1.** After receipt of a final Payment Request and in compliance with A.A.C. R7-2-1114, District shall make final payment 60 days after the receipt by the District, provided that CM@R has completed all of the Work in conformance with the Contract Documents, a Final Acceptance/Completion Letter has been issued by the District, and the CM@R has provided the information and documents noted in 7.4.2.
- 7.4.2.** At the time of submission of its final Payment Request, CM@R shall provide the following information:
- 7.4.2.1.** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect District's interests;

7.4.2.2. A general release executed by CM@R waiving, upon receipt of final payment by CM@R, all claims, except those claims previously made in writing to District and remaining unsettled at the time of final payment; and

7.4.2.3. Consent of CM@R's surety, if any, to final payment.

7.5. Payments To Subcontractors or Supplier

7.5.1. CM@R shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the District and as required by Arizona law. The CM@R shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the District with each progress payment. In addition, any reduction of retention by the District to the CM@R shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@R shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the CM@R. No Contract between CM@R and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

7.5.2. If the CM@R fails to make payments in accordance with these provisions, the District may take any one or more of the following actions and CM@R agrees that the District may take such actions:

7.5.2.1. Hold the CM@R in default under this Agreement;

7.5.2.2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

7.5.2.3. Reject all future offers to perform work for the District from the CM@R for a period not to exceed one year from Substantial Completion date of this Project; and/or

7.5.2.4. Terminate this agreement.

7.5.3. Should the District fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.5.4. CM@R shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.6. Record Keeping and Finance Controls

7.6.1. Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and CM@R shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance/Completion of the Project.

7.6.2. The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

7.6.3. The District reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data.

7.6.4. The CM@R shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the District, its

authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

- 7.6.5.** The District reserves the right to decrease Contract Price and/or payments made under this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

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Article 8- Claims and Disputes

8.0. Requests for Contract Adjustments and Relief.

- 8.0.1.** If either CM@R or District believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2.** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3.** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4.** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1. Dispute Avoidance and Resolution

- 8.1.1.** 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, CM@R and District 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.
- 8.1.2.** CM@R and District will first attempt to resolve disputes or disagreements at the field level through discussions between CM@R's Representative and District's Representative, or their designee(s).
- 8.1.3.** If a dispute or disagreement cannot be resolved through field level discussions, CM@R's Representative and District's Representative, upon the request of either party, shall meet in a separately scheduled formal meeting, 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 Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the Representatives so agree other persons or parties may participate in this meeting.
- 8.1.4.** For any disputes not resolved pursuant to the foregoing provisions, the following procedures shall apply:
 - 8.1.4.1.** In signing this Agreement, CM@R agrees that any cause CM@R may have against the District and its Governing Board arising in relation to this Procurement, Project and Agreement, including but not limited to, contract claims and controversies, including claims related to assignees of the CM@R, shall be resolved exclusively through the procedures of the Arizona Education Procurement Code, A.A.C. R7-2-1001, et seq. and A.A.C. R7-2-1101, et seq., including but not limited to, A.A.C. R7-2-1141 through 1159 and R7-2-1181 through 1185.
 - 8.1.4.2.** Should this procedure be found to be void or otherwise barred by law, the provision set forth in A.A.C. R7-2-1155 through R7-2-1157 shall be required and shall be a condition precedent for the further prosecution of any such claim.

8.1.4.3. The parties agree that the Design or other Construction Professionals and their consultants, Subcontractor, Suppliers or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

8.2. Duty to Continue Performance Unless provided to the contrary in the Contract Documents, CM@R shall continue to perform the Work and District shall continue to satisfy its payment obligations to CM@R, pending the final resolution of any dispute or disagreement between CM@R and District.

8.3. Representatives of the Parties

8.3.1. District's Representative District designates the individual listed below or his designee as its Representative ("District's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

Kristin Turner
Paloma Elementary School District No. 94
Address: HCO 1 PO Box 172
38739 W Interstate-8

Phone: (928) 683-2588
Fax: (928) 683-2093

8.3.2. CM@R's Representative CM@R designates the individual listed below as its Representative ("CM@R's Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

_____ Construction

Address: _____
Phone: _____
Fax: _____

Article 9 – Suspension and Termination

9.0. District's Right to Stop Work

- 9.0.1.** District may, at its discretion and without cause, order CM@R in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- 9.0.2.** CM@R may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by District.

9.1. Termination for Convenience

- 9.1.1.** Upon receipt of written notice to CM@R, District may, at its discretion and without cause, elect to terminate this Agreement. In such event, District shall pay CM@R only the direct value of its completed Work and materials supplied as of the date of termination. CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2.** If the District suspends the Work for 181 consecutive days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CM@R shall proceed with the following obligations.
 - 9.1.3.1** Stop Work as specified in the notice.
 - 9.1.3.2** Place no further subcontracts or orders.
 - 9.1.3.3** Terminate all subcontracts to the extent they relate to the work terminated.
 - 9.1.3.4** Assign to the District all right, title and interest of the CM@R under the subcontracts terminated, in which case the District shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to the contract that is in the possession of the CM@R and which the District has or may acquire an interest.
- 9.1.4** The CM@R shall submit complete termination inventory schedules no later than 90 days from the date of the notice of termination.
- 9.1.5** The District shall pay CM@R the following.
 - 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
 - 9.1.5.2** The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from CM@R's failure to perform as required under this contract.
 - 9.1.5.3** CM@R shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the CM@R would have sustained a loss on the entire Work had the CM@R completed the Work, the CM@R shall not be allowed profit and the District shall reduce the settlement to reflect the indicated rate of loss.

- 9.1.6** The CM@R shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.6.

9.2. District's Right to Perform and Terminate for Cause

- 9.2.1.** If the District provides the CM@R with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@R fails to comply in a time frame specified, the District may have work accomplished by other sources at the CM@R's expense.
- 9.2.2.** If CM@R persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, and in compliance with all other contract terms, conditions and specifications, or (vi) perform material obligations under the Contract Documents, then District, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Divisions 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Division 9.2.2 above, District may provide written notice to CM@R that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@R's receipt of such notice.
- 9.2.3.1.** If CM@R fails to cure, or reasonably commence to cure, such problem, then District may give a second written notice to CM@R of its intent to terminate within an additional seven (7) day period.
- 9.2.3.2.** If CM@R, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then District may declare the Agreement terminated for default by providing written notice to CM@R of such declaration.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subdivision 9.2.3.2 above, District may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@R hereby transfers, assigns and sets over to District for such purpose, including the assignment of subcontracts pursuant to Paragraph 12.7, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM@R shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@R will only be entitled to be paid for Work performed and accepted by the District prior to its default minus amounts described in Paragraph 9.2.6.
- 9.2.6.** If District's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@R shall be obligated to pay the difference to District. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by District in connection with the procurement and defense of claims arising from CM@R's default.
- 9.2.7.** If District improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

Article 10 - Insurance and Bonds

10.0. Insurance Requirements

10.0.1 CM@R and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the CM@R, his agents, representatives, employees or Subcontractors.

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement or amounts District may recover.

10.0.3 The District in no way warrants that the minimum limits contained herein are sufficient to protect the CM@R from liabilities that might arise out of the performance of the work under this Agreement by the CM@R, his agents, representatives, employees, or subcontractors. CM@R is free to purchase such additional insurance as may be determined necessary.

10.1 Minimum Scope And Limits Of Insurance. CM@R shall provide coverage with limits of liability not less than those stated below:

10.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, direct operations, sublet work, completed operations, sexual predator coverage, broad form contractual liability and XCU coverage.

• General Aggregate/for this Project	\$2,000,000/\$2,000,000
• Products – Completed Operations Aggregate	\$2,000,000
• Personal and Advertising Injury	\$2,000,000
• Each Occurrence	\$2,000,000
• Maximum Deductible	\$2,000

The policy shall be endorsed to include the following additional insured language: **"The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R".**

10.1.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.
Combined Single Limit (CSL) \$2,000,000

The policy shall be endorsed to include the following additional insured language: **"The District shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R, including automobiles owned, leased, hired or borrowed by the CM@R".**

10.1.3 Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

The policy shall contain a **waiver of subrogation** against the District.

10.1.4 Builders' Risk Insurance or Installation Floater \$ _____
In an amount equal to the initial Agreement Amount plus additional coverage equal to Agreement Amount for all subsequent change orders.

- 10.1.4.1** The District, the CM@R, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the work shall be **Named Insureds** on the policy.
- 10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement**.
- 10.1.4.3** Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the District, has an insurable interest in the property required to be covered.
- 10.1.4.4** Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the District.
- 10.1.4.5** Policy must provide coverage from the time any covered property becomes the responsibility of the CM@R, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- 10.1.4.6** Policy shall contain a **waiver of subrogation** against the District.
- 10.1.4.7** CM@R is responsible for the payment of all policy deductibles.
- 10.2** **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:
- 10.2.1** On insurance policies where the District is named as an additional insured, the District shall be an additional insured to the full limits of liability purchased by the CM@R even if those limits of liability are in excess of those required by this Agreement.
- 10.2.2** The CM@R's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 10.2.3** Coverage provided by the CM@R shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.3** **Notice Of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the District. Such notice shall be sent directly to the District Representative and shall be sent by certified mail, return receipt requested.
- 10.4** **Acceptability Of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@R from potential insurer insolvency.
- 10.5** **Verification Of Coverage**
- 10.5.1** CM@R shall furnish the District with certificates of insurance (ACORD form or equivalent approved by the District) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 10.5.2** All certificates and endorsements are to be received and approved by the District before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
- 10.5.3** All certificates required by this Agreement shall be sent directly to District's Representative. The District project/contract number and project description shall be noted on the certificate of insurance. The District reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE DISTRICT'S RISK MANAGEMENT DIVISION.**
- 10.5.4** If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the District's requirements, the contractor must:
- Submit a current insurance certificate (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the insurance certificate is not submitted with the payment request and/or if the insurance or certificate is deficient or non-conforming.
- 10.6** **Subcontractors.** CM@Rs' certificate(s) shall include all Subcontractors as additional insureds under its policies or CM@R shall furnish to the District separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7** **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the District, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 10.8** **Bonds and Other Performance Security.**
- 10.8.1** Prior to execution of this Agreement, the CM@R must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP set forth in this Agreement and in strict compliance with A.A.C. R7-2-1112 – 1113 and 1116 and other applicable laws.
- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the District.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
- 10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@R shall promptly furnish a copy of the bonds or shall permit a copy to be made.

- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "B+VI or better for the prior four quarters" by the A.M. Best Company.

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Article 11 - Indemnification

11.1 CM@R's General Indemnification.

- 11.1.1 CM@R agrees to indemnify and save harmless the District, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of the Contract Documents or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM@R to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@R will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the District, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the District.

Article 12 – General Provisions

12.1 Contract Documents

12.1.1 Contract Documents are as defined in Article 1.

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

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

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

12.1.3.2 Specifications take precedence over Plans.

12.1.3.3 In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract

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

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

12.2 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

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

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

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

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

12.7 **Contingent Assignment of Subcontracts.** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

12.7.1 Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 9.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

- 12.7.2** Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Said contingent assignment shall be in all subcontracts.
- 12.8** **Successorship.** CM@R and District intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.9** **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the District and the CM@R, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of District and the CM@R and not for the benefit of any other party.
- 12.10** **Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, in the Arizona County in which the Work is to be constructed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.
- 12.11** **Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.12** **Compliance with Federal Laws. This Project is funded in total or part with federal funds. Therefore, CM@R and all subcontractors, vendors, materialmen and agents shall strictly comply with all applicable federal laws, regulations, terms and conditions including Form FHWA-1273 and specifications and supplements thereto, attached hereto and made a part hereof as Exhibit E. Any violation of the foregoing shall be a material substantial breach of this Contract.** CM@R understands and acknowledges the applicability of Federal Laws including, but not limited to, the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@R agrees to comply with these laws in performing the Contract Documents and to permit the District to verify such compliance.
- 12.13** **Legal Requirements.** CM@R shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 12.14** **Fair Treatment of Workers.** The CM@R shall keep fully informed of all Federal and State laws, County and District ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. CM@R shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@R shall protect and indemnify the District and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- 12.15** **Independent Contractor.** The CM@R is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the District the right to direct the CM@R as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@R shall follow the wishes of the District as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.16** **District's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the District pursuant to the provisions of Section 38-511, Arizona Revised Statutes and other applicable Arizona law.

- 12.17 Survival.** All warranties, representations and indemnifications by the CM@R shall survive the completion or termination of this Agreement.
- 12.18 Covenant Against Contingent Fees.** The CM@R warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the District Council, or any employee of the District has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the District shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.19 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.19 Notice.**
- 12.19.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CM@R:

_____ Construction

Address: _____

Phone: _____

Fax: _____

To District:

Paloma Elementary School District No. 94

Address: HC 61, Box 40, Gila Bend, AZ 86514

Phone: (928) 683-2588

Fax: (928) 683-2093

With a Copy to:

_____ School District No. _____

Address: _____

Phone: _____

Fax: _____

To Design Professional:

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

- 12.19.2** Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CM@R:

_____ Construction

_____ Address:

Phone:

Fax:

To District:

Paloma Elementary School District No. 94

Address: HC 61, Box 40, Gila Bend, AZ 86514

Phone: (928) 683-2588

Fax: (928) 683-2093

With a Copy to:

_____ School District No. _____

Address:

Phone:

Fax:

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

12.20 Equal Opportunity/Affirmative Action

- 12.20.1** The CM@R shall comply with the provisions of this Agreement and specifically Exhibit E, including the requirements of District policies, pertaining to discrimination and accepting applications or hiring employees. The CM@R shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@R will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The CM@R further agrees that this clause and Exhibit E will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM@R.

- 12.20.2** The District extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an

equal economic opportunity to compete for District business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

- 12.20.3** The following two paragraphs apply to the CM@R named herein and shall appear in all contracts between the CM@R and any and all Subcontractors who are employed on this Project. The CM@R further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

"Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice **and shall strictly comply with all laws, regulations, requirements or terms and conditions as required by applicable federal, state, tribal, local laws including those noted in Form FHWA-1273 and the specifications and supplements attached thereto in Exhibit E.**

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The CM@R further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

12.21 Confidentiality Of Plans & Specifications

- 12.21.1** Any plans or specifications you receive regarding this project are for official use only. You may not share them with others except as required to fulfill the obligations of your contract with the District.

- 12.21.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@R shall include the following language: "These plans are official use only and may not be shared with others except as required to fulfill the obligations of your contract with the District".

- 12.22 CM@R and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@R shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare. CM@R shall at a minimum ensure that all relevant personnel shall obtain a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 and A.R.S. § 15-512(H).

- 12.22.1 Security Inquiries.** CM@R acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@R shall exercise due diligence in conducting such checks and acting to prevent individuals who may compromise the health, safety and welfare of students, staff and/or community from being on the site or District property. CM@R shall perform all such security inquiries and shall make the results available to District for all employees considered for performing work (including supervision and oversight) under this Agreement. District may make further security inquiries. Whether or not further security inquiries are made by District, District may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@R for performing work under this Agreement. Employees rejected by District for performing services under this Agreement may still be engaged by CM@R for other work not involving the District. An employee rejected for work under this Agreement shall not be proposed

to perform work under other District contracts or engagements without District 's prior approval.

- 12.22.2** Criteria for Evaluating Security Inquiries. Once formally adopted by District, criteria for excluding an individual from performing work under this Agreement shall be communicated by District to CM@R and used by CM@R as a factor in making its decision. Prior to such adoption, CM@R shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by District in evaluating its own personnel.
- 12.22.3** Additional District Rights Regarding Security Inquiries. In addition to the foregoing, District reserves the right to: (1) have an employee/prospective employee of CM@R be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@R 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@R performing work (including supervision and oversight) under this Agreement.
- 12.22.4** Terms of This Provision Applicable to all of CM@R Contracts and Subcontracts. CM@R shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 12.22.5** Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to District 's entry into this Agreement and any breach thereof by CM@R may, at District's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@R to liability for its breach of contract.
- 12.23** **Hazardous Materials**
- 12.23.1** Unless included in the Work, if the CM@R encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the District.
- 12.23.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@R shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@R and the District may agree, in writing, to continue work in non-affected areas onsite.
- 12.23.3** An extension of Contract Time may be granted in accordance with Article 6.
- 12.23.4** The CM@R will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 12.24** **Computer Systems** CM@R shall warrant fault free performance in the processing of data and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.

- 12.25 Traffic Control.** CM@R will comply with all traffic control provisions as may be provided in the technical specifications.
- 12.26** In accordance with A.R.S. § 35-397 the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Iran or Sudan.
- 12.27** By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the District upon request. These warranties shall remain in effect through the term of the contract.
- The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.
- Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
- 12.28** Contractor, by its signature below, warrants and certifies that it has reviewed A.R.S. § 15-512 including but not limited to sub-paragraph H and further warrants that it shall comply and cause any employee, subcontractor or employee of subcontractor to comply with A.R.S. § 15-512 and as set forth in 12.22 *et seq*, herein.

PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94, GILA BEND, ARIZONA

PALOMA ELEMENTARY SCHOOL DISTRICT NO. 94

ARCHITECTURAL AND ENGINEERING SERVICES

Project No. 14-04-18

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The CM@R agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

Guaranteed Maximum Price No. --

(Written Amount)

\$-----

PALOMA ELEMENTARY SCHOOL
DISTRICT NO. 94, an Arizona School District

a legal entity

By: _____
Dr. Tommie Yazzie, Superintendent

By: _____
_____, President

DATE: _____

DATE: _____

EXHIBIT A - 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:

CM@R Design Phase and Construction Services as necessary and/or as set forth in the Contract Documents for the construction of _____ to be located in _____, Arizona, all as may be more fully set forth in the documents provided pursuant to the Contracts herein.

The full street or physical address of the Project is:

DRAFT

DRAFT

DRAFT

EXHIBIT D – CONSTRUCTION DRAWINGS

Three sets of construction drawings, as referenced herein, are on file with the:

- Design Professional
- District Manager
- [CM@R](#) Contractor

DRAFT