

**CONSTRUCTION SERVICES CONTRACT  
FOR CONSTRUCTION MANAGER AT RISK (CM@R) PROJECT**

**Project Name:** City of Tolleson Aquatics Center  
**Project No.:** ENG 24-02

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## **CONSTRUCTION SERVICES CONTRACT FOR CONSTRUCTION MANAGER AT RISK (CM@R) PROJECT**

THIS CONSTRUCTION SERVICES CONTRACT (this “Contract”) between the City of Tolleson, a municipal corporation (“CITY”) and Chasse Building Team, Inc., an Arizona domestic for-profit (business) corporation (“CM@R”), (collectively, “the Parties”), is hereby entered into and shall be effective on the last signature date set forth below (the “Effective Date”).

CITY and CM@R, in consideration of the mutual covenants set forth herein, agree as follows:

### **1.0 CM@R - FIDUCIARY DUTY**

- 1.1 This Contract is for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CM@R has participated in the design process and been an active member of the Project Team and is fully aware of the issues and constraints involved in this construction Project.
- 1.2 CM@R is CITY’S fiduciary responsible for undertaking all necessary action contemplated under the Contract Documents, as defined in Section 8.0 of this Contract, to construct the Project and ensure timely and quality completion of the project at a cost within the Guaranteed Maximum Price (GMP).
- 1.3 This Project is an “open book” project. CITY is entitled to attend any and all meetings, and CITY shall have access to any and all records of CM@R or maintained by CM@R relating to the Project.

### **2.0 CONSTRUCTION SERVICES**

- 2.1 Unless otherwise specifically defined in this Contract, all capitalized terms used herein shall have the meanings ascribed to them in the Contract Documents, which include, but are not limited to, the Construction Manager at Risk Pre-Construction Services Contract, the General Conditions, the Supplementary Conditions, and the Project Drawings and Specifications.
- 2.2 CM@R shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the City of Tolleson Aquatics Center Project and is generally described as follows: Complete construction of the City of Tolleson Aquatics Center facility in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.
- 2.3 CM@R shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

### **3.0 CITY OF TOLLESON PROJECT MANAGER**

CITY has appointed a Project Manager/Construction Manager (PM/CM) to manage this Project and to represent CITY on the Project site. CITY'S PM/CM will assume all duties and responsibilities and will have all rights and authority assigned to CITY PM/CM in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

CITY'S PM/CM for this Project is Chris Hamilton.

### **4.0 CONTRACT TIME**

- 4.1 CM@R shall submit to CITY, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in a format compatible with City Engineer recommendations, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.
- 4.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Completion and readiness for final payments as stated in the Contract Documents, are of the essence of the Contract.
- 4.3 The Work shall be substantially complete within \_\_\_\_\_ working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within \_\_\_\_\_ working days after the date when the Contract Times commences to run.
- 4.4 Failure of CM@R to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling CITY to terminate the Contract unless CM@R applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.
- 4.5 Failure of CITY to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CM@R's duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.
- 4.6 CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CM@R to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling CITY to all the remedies set forth herein or provided by law.

## **5.0 LIQUIDATED AND SPECIAL DAMAGES**

5.1 It is hereby agreed that the amounts per day set forth herein in paragraph 5.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by CITY, and CM@R agrees to pay such liquidated damages as herein provided.

5.1.1 CITY and CM@R recognize that time is of the essence for this Contract and that CITY will suffer financial loss, in addition to and apart from the costs described in Paragraph 5.2, if the Work and/or portions of the Work are not performed and completed within the times specified in Section 4, plus any extensions thereof allowed in accordance within the Contract Documents. CITY and CM@R also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and CM@R agree that as liquidated damages for delay (but not as a penalty) CM@R shall pay CITY three thousand five hundred dollars and no cents (\$3,500.00) for each working day that expires after the time specified in Section 4 for substantial completion, until the Work is substantially complete. After Substantial Completion, if CM@R shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by CITY, CM@R shall pay CITY one thousand five hundred dollars and no cents (\$1,500.00) for each working day that expires after the time specified in Section 5 for final completion and readiness for final payment.

5.2 Special Damages: In addition to the amounts provided for liquidated damages, CM@R shall pay CITY the actual costs reasonably incurred by CITY for CITY'S PM/CM, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified in Section 3 for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is \$130.00 per hour. The rate for the work by the Project Engineer / CITY's PM/CM for this Contract is \$175.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

5.3 CITY may withhold and deduct from any payment due to CM@R the amount of liquidated damages, special damages, and other costs, such as CM@R's failed testing costs or damages to other CITY property, from any moneys due CM@R under the Contract.

## **6.0 CONTRACT PRICE**

CITY shall pay CM@R for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the Total Project Cost of \$36,900,000 as more specifically set forth in Exhibit A – Guaranteed Maximum Price (GMP) Proposal (including Cost Model Form CM@R 04.04) and incorporated herein by reference.

## **7.0 CM@R REPRESENTATIONS**

As part of the inducement for CITY to enter into this Contract, CM@R makes the following representations:

- 7.1 CM@R was a member of the Project Team for this Project and participated in and provided recommendations concerning the Contract Documents and Project Design.
- 7.2 CM@R has examined and carefully studied the Contract Documents (including any Addenda) and other related data, including “technical data” and all federal, state and local laws, ordinances, standards, rules and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.3 CM@R has obtained and carefully studied (or assumes responsibility for having done so) the reports of investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) and the drawings of physical conditions in or relating to existing surface or subsurface structures, at or contiguous to the site or otherwise which may affect costs, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CM@R and safety precautions and programs incident thereto. CM@R acknowledges that such reports and drawings are not Contract Documents and may not be complete for CM@R’s purposes. CM@R acknowledges that CITY and CITY’S PM/CM do not assume responsibility for the accuracy or completeness of information and data shown or indicated therein within respect to Underground Facilities at or contiguous to the site. CM@R acknowledges full responsibility for locating and resolving any conflicts with any Underground Facilities.
- 7.4 CM@R has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.5 CM@R has made or caused to be made examinations, investigations, tests, studies and related data as it deems necessary, and CM@R does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.6 CM@R has correlated the information known to CM@R, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, reports, and data, with the terms and conditions of the Contract Documents.
- 7.7 CM@R has given CITY’S PM/CM written notice of all conflicts, errors, or discrepancies that CM@R has discovered in the Contract Documents, and the written resolution thereof by CITY is acceptable to CM@R, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CM@R assumes full responsibility and liability for any conflicts, errors or discrepancies in the Contract Documents, including, but not limited to, the specifications, design and engineering for the project, for which written notice has not been provided and which a reasonable CM@R, participating in the design process as the Construction Manager at Risk would have discovered.

## **8.0 CONTRACT DOCUMENTS**

“Contract Documents,” as used throughout this Agreement, includes the following documents, which are hereby incorporated by reference and made a material part of this Contract:

- 8.1 This Contract and any exhibits, amendments, or addenda thereto.
- 8.3 The Project Specifications dated \_\_\_\_\_ entitled \_\_\_\_\_ Project.
- 8.4 The Project Drawings comprised of a set entitled \_\_\_\_\_ and dated \_\_\_\_\_.
- 8.5 Performance Bond and Payment Bond.
- 8.6 The approved CPM Construction Schedule dated \_\_\_\_\_.
- 8.7 The Project General Conditions.
- 8.8 The Project Supplementary Conditions.
- 8.9 Notice to Proceed dated \_\_\_\_\_.
- 8.10 CM@R’s Guaranteed Maximum Price (GMP) dated \_\_\_\_\_.
- 8.11 CM@R’s List of Subcontractors.
- 8.12 CM@R’s Schedule of Manufacturers and Suppliers of Major Equipment and Material Items.
- 8.13 The CM@R Pre-Construction Services Contract.
- 8.14 The CITY’S Request for Qualifications (RFQ) and associated documents.
- 8.15 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:
  - A. Written Attachments
  - B. Work Change Directives
  - C. Change Order(s)

## **9.0 MISCELLANEOUS**

- 9.1 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party’s right to enforce such a provision at a later time and shall not serve to vary the terms of this Contract.
- 9.2 CITY and CM@R each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in these Contract Documents.

### 9.3 Immigration Law Compliance Warranty:

- 9.3.1 As required by A.R.S. § 41-4401, CM@R hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CM@R further warrants that after hiring an employee, CM@R verifies the employment eligibility of the employee through the E-Verify program.
- 9.3.2 If CM@R uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.
- 9.3.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. CM@R is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. CITY at its option may terminate the Contract after the third violation. CM@R shall not be deemed in material breach of this Contract if the CM@R and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).
- 9.3.4 CITY retains the legal right to inspect the papers of any CM@R or subcontractor employee who works on the Contract to ensure that the CM@R or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.
- 9.3.5 If state law is amended, the parties may modify this paragraph consistent with state law.

9.4 Equal Treatment of Workers: CM@R shall keep fully informed of all federal and state laws, county and local 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 equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). CM@R shall protect and indemnify City and its representatives against any claim or liability arising from or based on the violation of such, whether by CM@R or its employees.

9.5 Israel. To the extent A.R.S. § 35-393 through § 35-393.03 is applicable, Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of goods and services from Israel, as that term is defined in A.R.S. § 35-393.

9.6 China. Pursuant to and in compliance with A.R.S. § 35-394, Contractor hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that Contractor will not, use: (i) the forced labor of ethnic Uyghurs in the People’s Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by

the forced labor of ethnic Uyghurs in the People's Republic of China. Contractor also hereby agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such as action.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

CITY OF TOLLESON

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Crystal Zamora, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Justin Pierce, City Attorney

CONSTRUCTION MANAGER AT RISK

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_