



**November 21, 2023**

**NOTICE OF REQUEST FOR STATEMENT OF  
QUALIFICATIONS (RFQ) FOR CONSTRUCTION  
MANAGER AT RISK FOR TUBAC FIRE DISTRICT FIRE  
STATION #1 CONSTRUCTION PROJECT**

**ISSUED BY  
TUBAC FIRE DISTRICT  
2227 EAST FRONTAGE ROAD  
TUBAC, AZ 85646**

---

## **SECTION I – PROJECT DESCRIPTION**

The Tubac Fire District (TFD) is accepting Statements of Qualifications from qualified Construction Managers at Risk (CMAR) to provide complete construction services for the TFD Fire Station #1 construction Project. The Project site is located at 2227 East Frontage Road, Tubac, AZ 85646 (parcel number 112-15-001C). The District is seeking licensed contractors with background and experience constructing fire station facilities. The CMAR shall understand the special concerns of fire station facilities, the challenges associated with replacing the existing facility located at 2227 East Frontage Road ("Facility"), and any related offsite improvements. The Project is currently being designed by Breckenridge Group and will be developed with the goal of using a team approach to identify options and any available cost/benefit measures that will produce the best attainable facility. The initial District budget range for this Project is approximately \$5.5 million.

The District intends to promptly and expeditiously pursue implementation of this Project and, toward that end, is taking all necessary steps to finalize financing and prepare to break ground as soon as possible.

## **SECTION II – BACKGROUND**

The TFD will work with our architect, Breckenridge Group, and the selected CMAR to design and construct an approximately 9,000 square foot, 3-apparatus bay fire station, to be known as Tubac Fire Station #1.

In 2022, TFD was informed that it would receive congressionally directed funding of \$2 million for a new Fire Station facility to replace Station #1 in Tubac. District staff has been working through the grant entitlement process with the U.S. Department of Agriculture, Rural Development, Community Facilities grant managers. Additionally, the Fire District Board unanimously decided to use the existing property at 2227 East Frontage Road in Tubac for the new station. This will necessitate relocating essential administrative and operations duties during construction activities.

The TFD and Breckenridge Group will work with the CMAR to determine the guaranteed maximum price (GMP) and final phasing of the construction.

## **SECTION III - SITE CHARACTERISTICS**

The existing site for Fire Station #1 is approximately 1.165 acres and located on the east side of the East Frontage Road about 950 feet north of the main entrance to the village of Tubac. The existing site is currently developed with aging fire station facilities including equipment bays, an administration area, and a manufactured home being used for crew quarters. Drainage generally sheet flows to the east. The site has direct access to the East Frontage Road, which is part of the Arizona Department of Transportation (ADOT) system.

## **SECTION IV - SCOPE OF WORK – (see Exhibit A for Conceptual Plan)**

Preconstruction phase services by CMAR may include the following:

- Provide detailed cost estimating and value engineering options including alternate systems evaluation and constructability studies;
- Provide design assistance, as required and/or requested by Breckenridge Group;
- Provide Project planning and scheduling;
- Provide long-lead procurement strategies;
- Secure building and related permits, as required;
- Provide complete Guaranteed Maximum Price proposals with assumptions and clarifications to TFD contact;

- Incorporate TFD's interest for quality, safety, and environmental factors;
- Coordinate with utility companies and the District for on-site and offsite utilities, including wastewater;
- Coordinate with the ADOT to ensure on-going and improved, as necessary, access to the East Frontage Road.
- Assist in determining the ultimate Project construction phasing, if appropriate.

## **SECTION V – EVALUATION CRITERIA**

Qualified firms will submit Statements of Qualifications for review by the District's selection panel. Evaluation of the submittals will be based on the following:

• General Information	Max. 100 Points
• Experience and qualifications of the firm/team	Max. 150 Points
• Experience of key personnel	Max. 250 Points
• Subcontractor Pre-Selection Plan	Max. 50 Points
• Understanding and Approach	Max. 350 Points
• Overall Evaluation	Max. 100 Points
Total Max. 1000 Points	

The Construction Manager at Risk will be selected through a qualifications-based selection process. Respondents interested in providing CMAR services must submit a Statement of Qualifications (SOQ) that addresses the following areas:

### **A. General Information (100 points)**

1. Provide a general description of the firm. Explain the legal organization of the proposed firm. Provide an organization chart showing key personnel.
2. Provide the following information:
  - a. List the Arizona contractor licenses held by the firm/team and the key personnel who will be assigned to this Project. Provide the contractor's license number and explain if held by an individual or the firm.
  - b. Identify any contract or subcontract held by the firm, which has been terminated within the last five years.
  - c. Identify any claims arising from a contract, which resulted in litigation or arbitration within the last three years. Briefly describe the circumstances and the outcomes.
  - d. If selected as a finalist for this Project, you will be required to provide a statement from an "A -" or better surety company describing the Company's bonding capacity.

### **B. Experience and qualifications of the firm/team (150 points)**

1. Identify at least three comparable fire station or similar projects participated in or completed by the firm within the past ten years. Emphasize construction and CMAR services.
2. For each project identified, provide the following:
  - a. Description of the project
  - b. Role of the firm/team
  - c. Project's original contracted construction cost and final construction cost
  - d. Construction dates

- e. Project Owner
- f. Reference information (two current names with telephone numbers and email per project)
- g. Experience of the Team working together on similar projects

**C. Experience of key personnel to be assigned to this Project (250 points)**

1. Identify all key personnel for the proposed Project team. For each key person identified, list their length of time with the firm and all fire station projects in which they have played a primary role. For all listed projects provide the following:

- a. Description of project
- b. Role of the person
- c. Project's original contracted construction cost and final construction cost
- d. Construction dates
- e. Project Owner
- f. Reference information (two current names with telephone numbers and emails per project)

**D. Subcontractor Pre-Selection Plan (50 points)**

The firm must submit a Subcontractor Pre-Selection Plan that is consistent with the guidance provided in Exhibit B. The Pre-Selection Plan should include a complete list of anticipated trades and suppliers and a discussion how selections will be made (i.e., qualifications, cost or combination).

**E. Understanding of the Project and approach to performing the required services (350 points)**

1. Propose strategies to manage the established Project's construction budget. Describe the skills and techniques that make your firm the superior candidate for this Project. Provide specific examples and protocols for value engineering while maintaining the intent of the Project.
2. Describe your firm's approach to Projects with tight timeframes for design and construction. How do you propose to structure your team to assist the designers during preconstruction phase services and provide timely information and input?
3. Describe your firm's Project management approach and team organization during preconstruction and construction services. Briefly describe your approach to managing quality, cost control and integrating construction and on-going operations.
4. Discuss your team's approach to construction on a constrained site with limited access for heavy construction equipment. How will you protect existing construction that may be in place.
5. Discuss your team's approach to phasing, material, and equipment storage onsite, start/stop construction and mobilization/demobilization of temporary facilities.
6. Sustainability is a priority for the TFD. Discuss your approach to cost benefit analysis versus return on investment and life cycle analysis.

**F. Overall evaluation of the team (100 points)**

This is to be determined by the selection panel members. No submittal response is required.

## **SECTION VI - SELECTION PROCESS**

A Selection Panel will evaluate and score each SOQ according to the criteria set forth above to determine a shortlist of three (3) to five (5) submitters for the interview phase of the selection process. Teams on the shortlist may be invited to participate in detailed interviews, however, **the TFD reserves the right to select a firm based on the evaluation of the SOQ submittals alone and not proceed to interviews.** If the selection panel determines that interviews are warranted, an interview invitation letter providing the evaluation criteria to be used will be sent to the shortlisted firms.

At the conclusion of the selection process, for each submitter, the rated elements will be evaluated to determine the best qualified firm for this request. If the TFD is unsuccessful in negotiating a contract with the best qualified firm, the TFD may then negotiate with the second or third most qualified team until a contract is executed or may decide to terminate the selection process.

Until the award and execution of the CMAR contract for the Project, the TFD will only release the name of each firm/team that submitted an SOQ. All other information received by the TFD in response to the RFQ or contained in the proposals will be confidential to avoid disclosure of the contents that may be prejudicial to the competing offerors during the selection process. The submittal of the winning team will be open to public inspection after the contract is awarded and the TFD has executed the contract with the selected offeror.

The following tentative schedule has been prepared for this selection (all times are local):

- RELEASE REQUEST FOR STATEMENT OF QUALIFICATIONS      Monday, November 21, 2023
- PRE-SUBMITTAL MEETING      Monday, December 11, 2023, 2 pm AZ  
Time at Project site
- DEADLINE FOR REQUESTS FOR INFORMATION      3 pm Friday, December 15, 2023
- SUBMITTAL DEADLINE      3 pm Friday, December 22, 2023
- SHORTLIST INTERVIEWS, IF NECESSARY      EARLY JANUARY 2024 (tentative)
- SELECTION      MID JANUARY 2024 (tentative)

## **SECTION VII - INTERVIEW PHASE REQUIREMENTS**

Each shortlisted team will be provided with the criteria, format and scoring for the interview phase of this Project when the short list is determined. The District reserves the right to eliminate the Interview Phase if it is in the best interest of the District.

## **SECTION VIII - CONTRACTS AND FEES**

The District will not request or consider fees, price, man-hours or any other cost information at any time during the selection process, including the selection of firms to be interviewed, the final list, the order of preference or any other purpose. The selected firm will negotiate with the District regarding the contract provisions and fees. One (1) contract may or will be awarded and one (1) firm may or will be awarded the contract.

## **SECTION IX - INDEMNIFICATION & INSURANCE REQUIREMENTS**

The TFD requires the selected Contractor to execute a Construction Manager at Risk Pre-Construction Phase Services Contract. The basic format of the District contract is attached to this RFQ as Exhibit C. **This agreement is a preliminary draft and is subject to potential changes before the final agreement is accepted** The TFD's Indemnification and Insurance language is included in this contract. **For firms submitting proposals, the District requires a statement in the submittal (include in cover letter) that the firm has read and understood all the elements laid out in the Construction Manager at Risk (CMAR) Pre-Construction Phase Services Contract.**

Questions regarding insurance and indemnification shall be addressed prior to submittal in writing, by e-mail, to the e-mail address listed in Section XIV.

The TFD will require the posting of Payment and Performance Bonds in conformance with the requirements of A.R.S. §34-610.

## **SECTION X - PRE-SUBMITTAL MEETING**

A pre-submittal meeting will be held at 2 pm. local time on Monday December 11, 2023 in the TFD Station #1 at 2227 East Frontage Road in Tubac. It is **NOT** mandatory that your firm/team attend the pre-submittal meeting.

## **SECTION XI - SUBMITTAL REQUIREMENTS**

Reply to this request with six copies and an electronic thumb drive Statement of Qualifications submittal which is **not more than twenty (20) pages** plus a one-page cover letter. Pages that have Project photos, charts, and graphs will count toward the maximum number of pages. However, the cover letter and/or cover will not be considered part of the twenty-page limitation, nor will résumés. Résumés for each key team member shall be limited to a maximum length of one page and should be incorporated as an appendix at the end of the SOQ.

Table of Contents or tabbed divider pages will not be counted towards the maximum number of pages. **Submittals which do not conform to the requirements will not be considered.**

The SOQ submittal must include:

- A cover letter prepared on the company's letterhead and signed by a principal of the company. Provide primary contact person and contact person's telephone number and e-mail address.
- The firm's responses to the RFQ criteria in order and titled as listed using a MAXIMUM of 20 pages, each 8½" x 11" in size.
- ***A statement in the proposal that the firm has read and understood all the elements laid out in the Construction Manager at Risk Pre-Construction Services Contract.***
- Addenda Acknowledgement (if applicable).

Please be advised that failure to comply with the following criteria may be grounds for disqualification:

- Receipt of submittal past specified cut-off date and time.
- Adherence to number of pages & page size.
- Inclusion of the required contract statement.
- Addenda Acknowledgement (if applicable) – Include in cover letter.

## **SECTION XII - SUBMITTAL TIME AND PLACE**

Submittals must be received no later than **3:00 p.m., local time, December 22, 2023**. The District reserves the right to cancel or modify this Request for Statements of Qualifications at any time.

Submittals should be made in a sealed envelope and labelled:

**CMAR SOQ Submittal – Tubac Fire District Fire Station #1 Project**  
**Ben Guerrero, Fire Chief**  
**Tubac Fire District**  
**2227 East Frontage Road**  
**Tubac, AZ 85646**

### **SECTION XIII - GENERAL INFORMATION**

This Project will follow ARS Title 34 requirements. All design and construction work shall be performed or supervised by State of Arizona licensed professionals.

District's Website: This Request for Statements of Qualification and all addenda will be posted on the TFD website. The address is: <https://www.tubacfire.org>.

The TFD will not be held responsible for any oral instructions. Any changes to this Request for Statements of Qualifications will be in the form of an addendum, which will be posted on the District website. **A statement of receipt of all addenda must be included in the submittal or transmittal.**

**District Rights:** The TFD reserves the right to reject any oral submission of a response to this Request for Statements of Qualifications, to waive any informality or irregularity in any Request for Qualifications received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

**Release of Project Information:** The TFD shall coordinate the release of all public information concerning the Project, including selection announcements and contract awards. Firms desiring to release information to the public must receive prior written approval from the District.

**Contact with District Employees:** All firms interested in this Project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub-consultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, TFD Board members, and staff. This policy is intended to create a level playing field for all potential firms; assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified below.

**No Preferential Treatment or Discrimination:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the TFD will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

**Civil Rights:** The TFD, in accordance with the provisions of Title VI of the Civil Rights 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### **SECTION XIV – QUESTIONS**

Questions pertaining to the consultant selection process or contract issues should be directed in writing or by e-mail to:

Ben Guerrero, Fire Chief  
Tubac Fire District  
2227 East Frontage Road  
Tubac, AZ 85646  
[bguerrero@tubacfire.org](mailto:bguerrero@tubacfire.org)

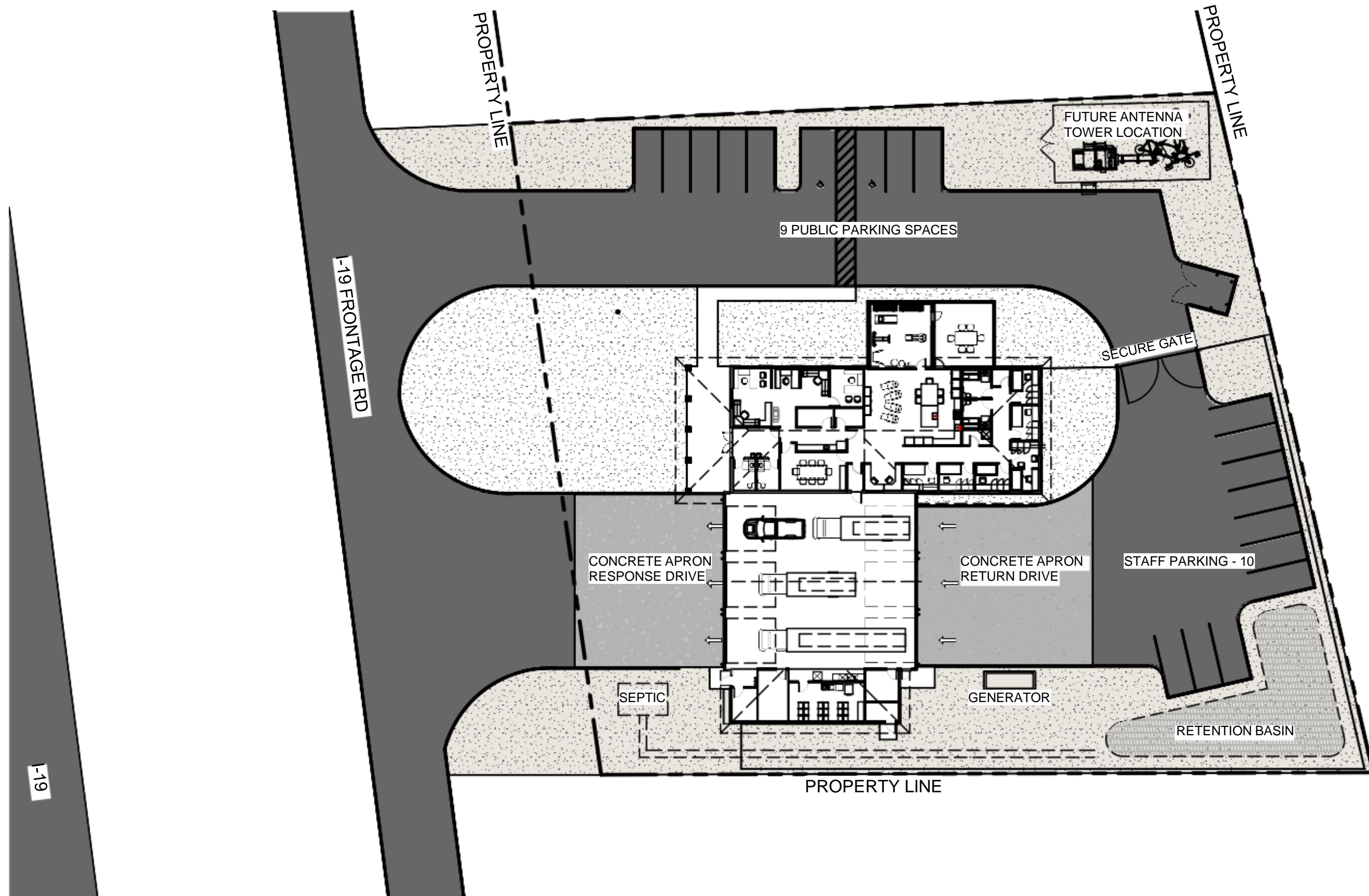
Requests for information on this RFQ must be received in writing by 3 pm local time December 13, 2023. Responses to questions will be posted to the District's website, at the address above, by close of business, December 15, by addendum. **Verbal inquiries, in person or by telephone, will not be answered.**

**EXHIBIT "A"**  
**SCOPE AND CONCEPTUAL PLAN**

The Project is to provide complete CMAR services for the design and construction of a new Fire Station #1 on the existing Station #1 site in substantial conformance with the conceptual site plan attached, on time and within budget.

---





# CONCEPTUAL SITE PLAN

TUBAC FIRE STATION  
2172205750



- SITE & BUILDING INFORMATION:**
- PARCEL ACREAGE: 1.165 ACRES
  - BUILDING AREA TOTAL: 8,992 SF
  - ADMIN. AREA (W/ LOBBY): 1,649 SF
  - FIRE STATION (FIRE HOUSE + APP. BAY) AREA: 7,343 SF

A1.0  
6/9/2023  
TUBAC FIRE STATION







# CONCEPTUAL FLOOR PLAN

TUBAC FIRE STATION  
2172205750

**SITE & BUILDING INFORMATION:**

- PARCEL ACREAGE: 1.165 ACRES
- BUILDING AREA TOTAL: 8,992 SF
- ADMIN AREA (W/ LOBBY): 1,649 SF
- FIRE STATION (FIRE HOUSE + APP. BAY) AREA: 7,343 SF

A2.0  
6/9/2023  
TUBAC FIRE STATION





**EXHIBIT “B”**  
**TUBAC FIRE DISTRICT SUBCONTRACTOR/SUPPLIER SELECTION PLAN**  
**GUIDELINES**

The CMAR firm will select subcontractors and suppliers, subject to the District’s prior approval of the Subcontractor Selection Plan. This shall occur before submission of a GMP Proposal. Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors may not be selected based on price alone. Except as noted below, the selection of Subcontractors and Suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.

The CMAR will prepare a Subcontractor/Supplier selection plan and submit the plan to the District for approval. This Plan will identify those subcontractor trades anticipated to be selected by qualifications only and those subcontractor trades anticipated to be selected by qualifications and competitive bid. The Plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements of this RFQ and the Design/Preconstruction Services Contract.

**ELEMENTS OF THE SUBCONTRACTOR/SUPPLIERS SELECTION PLAN**

- Selection by qualifications only - The District may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project. The CMAR must apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the District with its review and recommendation. The CMAR will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
  - Selection by qualifications and competitive bid - The CMAR must apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the District with its process to prequalify prospective subcontractors and suppliers. All Work for subcontractors and suppliers must then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected.
  - The CMAR will develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not 3 qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request approval by the District to submit less than 3 names. Without prior written notice to the District, no change in the recommended Subcontractors/Suppliers will be allowed.
-

**EXHIBIT “C”**

**CMAR PRE-CONSTRUCTION PHASE SERVICES AGREEMENT  
DRAFT**

**This draft services agreement is subject to change.**

***CONSTRUCTION MANAGER AT RISK***  
***Pre-Construction Phase Services Agreement***  
***DRAFT***

**Tubac Fire District**  
**Fire Station #1 Project**

THIS Agreement (the "Agreement") is made and entered by and between Tubac Fire District, hereinafter designated the ("Tubac Fire District", "The District", "TFD") and \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter designated the ("Construction Manager at Risk" or "CMAR").

## **RECITALS**

- A. Tubac Fire District, a special taxing district of the state of Arizona, is authorized and empowered by statute to execute agreements for professional services and construction services.
- B. The District intends to construct a new Fire Station #1 at 2227 East Frontage Road in Tubac, Arizona (Project), 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 an Agreement with the Breckenridge Group, hereinafter referred to as ("Breckenridge").
- D. CMAR has represented to the District the ability to provide pre-construction phase services and to construct the Project.
- E. Based on this representation, the District intends to enter into an Agreement with CMAR for the pre-construction phase services identified in this Agreement. At the end of the pre-construction phase, at the District's discretion, the District may enter into a separate construction agreement with CMAR 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 Tubac Fire District and CMAR 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 CMAR covering the pre-construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

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

"Change Order" – A type of Contract amendment issued after execution of the Contract Documents where unanticipated or unforeseen circumstances in the Work have been encountered. Each change Order shall be signed by TFD and CMAR, 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 Agreement terms.

“District (Owner)” – Tubac Fire District, with whom CMAR has entered into this Agreement and for whom the services are to be provided pursuant to said Agreement.

“District’s Representative” – The designated District Project Manager.

“District’s Senior Representative” – Tubac Fire District’s Fire Chief or designee.

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

“Construction Documents” - Certain plans, specifications and drawings prepared by the Breckenridge after correcting for permit review requirements or dated plans and specifications specifically identified as the (“Construction Documents”) herein or in an Exhibit or Addendum which is attached hereto.

“Construction Fee” – CMAR’s administrative costs, home office overhead, and profit, as applicable to this project, whether at CMAR’s principal or branch offices.

“Construction Manager at Risk (CMAR)” – The firm selected by the District to provide the Pre-Construction Phase Services as detailed in this Agreement.

“CMAR Representative” – CMAR designates [REDACTED] as its CMAR Representative.

“CMAR Senior Representative” – CMAR designates [REDACTED] as its Senior Representative.

“Contingency, CMAR’s” – A fund to cover cost growth during the Project used at the discretion of CMAR usually for costs that result from Project circumstances. The amount of CMAR’s Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CMAR’s Contingency is described in this Agreement.

“Contingency, Owners’ ” – A fund to cover cost growth during the Project used at the discretion of the District usually for costs that result from the District-directed changes or unforeseen Site conditions. The amount of the Owners’ Contingency shall be set solely by the District and shall be in addition to the project costs included in CMAR’s GMP packages. Use and management of the Owners’ Contingency is described in this Agreement.

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

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

“Cost of the Work” – Direct costs necessarily incurred by CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, sub-agreement 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 CMAR’s Construction Fee, General Conditions Cost, or taxes.

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

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

“Deliverables” – The work products prepared by CMAR in performing the scope of work described in this Agreement. Some of the major Deliverables to be prepared and provided by CMAR during the pre-construction 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 selection plan, Statement of Proposed Minority Business Enterprise/Women’s Business Enterprise (**“MBE/WBE”**) Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team and other services set forth in this Agreement or reasonably inferable therefrom.

“Breckenridge” – The licensed design professional who furnishes design, construction documents, and/or construction administration services required for the Project.

“Drawings (Plans)” – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by CMAR during the construction phase, and which have been prepared or approved by Breckenridge and the District. Includes Drawings that have reached a sufficient stage of completion and released by Breckenridge solely for the purposes of review and/or use in performing constructability or bid-ability 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” – 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” – 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 CMAR during the construction phase: (i) payroll costs for Project manager or CMAR for Work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management



personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CMAR or Subcontractors.

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

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

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

“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 CMAR to start Work.

“Opening Physical Conditions” – The current physical conditions present on the Site as jointly documented by an inspection of the Site by the District and CMAR at the Pre-construction Conference.

“Payment Request” – The form that is accepted by the District and used by CMAR in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and or the District.

“Pre-construction Conference” – A Conference held between District and CMAR prior to the commencement of any Work, as scheduled by the District’s Representative or designee.

“Project” – 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 Team” – Design phase services team consisting of Breckenridge, CMAR, and the District’s Representative, and the District Board as well as any others who are responsible for making decisions regarding the Project.

“Schedule of Values (SOV)” – A statement furnished by CMAR to the District’s Representative for approval, reflecting the portions of the GMP allotted for the various parts of the Work and used as the basis for evaluating CMAR’s applications for progress payments.

“Shop Drawings” – All drawings, diagrams, schedules and other data specifically prepared for the Work by

CMAR or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” – 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 an agreement with CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.

“Subcontractor” – An individual or firm having a direct agreement with CMAR or any other individual or firm having an agreement 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 CMAR is responsible.

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

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

“Supplier” – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Agreement with CMAR or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR 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 PRE-CONSTRUCTION PHASE SERVICES**

### **2.1 GENERAL**

2.1.1 CMAR, to further the interests of the District, shall perform the services required by, and in accordance with this Agreement, to the satisfaction of the District, exercising the degree of care, skill and

judgment a professional construction manager performing similar services would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

2.1.2 Program Evaluation: As a participating member of the Project Team, CMAR shall provide to the District and Breckenridge 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: CMAR shall attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

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

2.1.5 CMAR, when requested by the District, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. CMAR shall 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 CMAR may, and at the written request of the District shall, prepare a Construction Management Plan ("CMP"), which may, and at the written request of the District shall, include CMAR'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 sub agreements 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 CMAR may, and at the written request of TFD shall, add detail to its previous version of the CMP to keep it current throughout the pre-construction 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, Breckenridge or CMAR, (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 MASTER SCHEDULE**

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

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

2.3.2.1 The CPM diagram schedule shall be in 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. Formulation of the Project Master Schedule must also be based on the Opening Physical Conditions of the Site and any potential Winter Shutdown in the event the Work on the Project is delayed for any reason.

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

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

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

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

2.3.3 The Project Schedule shall consider the District's 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 CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.

2.3.4.2 CMAR 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 shall be granted nor delay damages paid until or unless a delay 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 the 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 Agreement, approval of substitution requests and credit changes which result in savings of time to CMAR, etc.). In such an event, CMAR 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 shall be updated and maintained by CMAR throughout the pre-construction phase such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall 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. CMAR shall include with such Submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

2.3.6 Project Phasing: If phased construction is deemed appropriate and the District and Breckenridge approve, CMAR shall 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. CMAR shall 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 CMAR shall evaluate periodically the availability of labor, materials/equipment, building systems, cost- sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Master Schedule.

2.4.2 CMAR shall 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 CMAR to construct the Project. Before initiating construction operations, CMAR may request additional

investigations in their GMP Proposal to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents.

2.4.3 CMAR shall meet with the Project Team, as required, to review designs during their development. CMAR shall familiarize itself with the evolving documents through the various design phases. CMAR shall 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. CMAR shall 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. CMAR shall recommend cost effective alternatives.

2.4.4 CMAR shall conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team and at a minimum as scheduled and identified by milestones in the Project Master Schedule required in Section 2.3 above. The reviews shall 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: CMAR shall 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 Bid-ability Reviews: CMAR shall 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 Results of the reviews shall 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, CMAR shall meet with the District and Breckenridge to discuss any findings and review reports.

2.4.4.4 CMAR's reviews shall be from a contractor's perspective, and though it shall serve to reduce the number of Requests for Information (RFI) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with Breckenridge and not CMAR.

2.4.5 Notification of Variance or Deficiency: It is CMAR's responsibility to assist Breckenridge in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with

applicable laws, statutes, ordinances, building codes, rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it shall promptly notify Breckenridge and District in writing, describing the apparent variance or deficiency. However, Breckenridge 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 shall 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, CMAR in cooperation with Breckenridge shall perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team shall decide which alternatives shall be incorporated into the Project. Breckenridge shall have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. CMAR shall 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 fourteen (14) days after receipt of the documents for the various phases of design, CMAR shall provide a detailed cost estimate and a written review of the documents. Breckenridge and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the District shall make the final determination.

2.5.2 If any estimate submitted to the District exceeds previously accepted estimates or the District's Project budget, CMAR shall make appropriate recommendations on methods and materials to the District and Breckenridge that CMAR believes shall bring the Project back into the Project budget.

2.5.3 In between these milestone estimates, CMAR shall periodically provide a tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of CMAR to keep the District and Breckenridge informed as to the major trend changes in costs relative to the District's budget.

2.5.4 If requested by the District, CMAR 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 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

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

2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or

lump sum amounts defined below.

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

2.6.2.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.

2.6.2.3 CMAR's Contingency is an amount CMAR 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. CMAR's Contingency is assumed to be a direct Project cost so all applicable markups shall be applied at the time of GMP submission.

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

2.6.3 Owner's Contingency are funds to be used at the sole discretion of the Owner. Owner's Contingency shall be added to the Contract Price, for approval by the District Board, 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 shall be applied.

2.6.4 GMP amendments are cumulative except for CMAR's Contingency. The amount of CMAR's Contingency for each GMP shall be negotiated separately.

2.6.5 CMAR, in preparing any GMP Proposal, shall obtain from Breckenridge, three sets of signed, sealed, and dated plans and specifications (including all addenda). CMAR shall prepare its GMP in accordance with the District's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. CMAR shall mark the face of each document of each set upon which its proposed GMP is based. These documents shall be identified as the GMP Plans and Specifications. CMAR shall send one set of those documents to the District's Representative, keep one set and return the third set to Breckenridge.

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

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

2.6.7 GMP savings resulting from a lower actual Project cost than anticipated by CMAR remaining at the end of the project, shall revert to the District.

## **2.6.8 GMP Proposal(s) Review and Approval**

2.6.8.1 The District may request a GMP from CMAR at any time during the Pre-Construction Phase. It is the District's expectation that the GMP shall not exceed the District-stated Project budget.



2.6.8.2 CMAR shall meet with the District and Breckenridge to review the GMP Proposal(s) and the written statement of its basis. In the event the District or Breckenridge discovers inconsistencies, inaccuracies or confusion in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal, its basis or both.

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

2.6.8.4 In the event that the GMP exceeds the District's Project budget, the District reserves the right to direct CMAR (and CMAR shall) work in conjunction with Breckenridge to assist in the redesign of the Project as necessary to meet the agreed upon program and the stated Project budget as follows:

- a) After direction from the District, CMAR shall coordinate and cooperate with the Project Team to assist Breckenridge in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
- b) CMAR shall develop and provide to the District a GMP in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
- c) CMAR shall analyze Breckenridge'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.

CMAR shall perform the work set forth in this Section without additional compensation.

2.6.8.5 The District, upon receipt of any GMP proposal from CMAR, may submit the GMP Plans and Specifications to a third party for review and verification.

2.6.8.6 If CMAR GMP Proposal is greater than the third party estimate or if the District, for some other stated reason may desire, the District may require CMAR to reconfirm its GMP Proposal. CMAR shall accept the third party's estimate for the cost of Work as part of its GMP Proposal, 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. CMAR may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the District.

2.6.8.7 If during the review and negotiation of GMP Proposals design changes are required, the District shall authorize and cause Breckenridge 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 shall be furnished to CMAR. CMAR shall promptly notify Breckenridge and District in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.6.8.8 After final submission of the GMP Proposal, the District may do any of the following:

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

2.6.8.9 Upon acceptance by the District of a GMP Proposal, the District shall prepare and CMAR shall execute the District's specified form of Agreement to reflect the GMP, and the GMP as approved shall become part of the Construction Services Agreement. Within ten (10) days after execution of the Construction Services Agreement, CMAR shall provide to the District a Performance Bond and a Labor and Material Payment Bond, each for 100% of the full Agreement price.

## **2.7 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

2.7.1 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; and
- 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 CMAR as set forth below, the combination of qualifications and price derived through the 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, CMAR shall ensure compliance with Arizona Revised Statutes § 34-603 et seq., as amended, and as it may be further amended relative to the selection of Subcontractors and major Suppliers.

2.7.2 The District may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when CMAR can demonstrate, in writing, that it is in the best interest of the Project and that the selection process shall constitute a prudent use of public funds.

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

2.7.2.2 CMAR shall prepare a Subcontractor or Supplier selection plan and submit the plan to the District for approval. CMAR 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.

2.7.2.3 CMAR shall obtain District approval of the selected Subcontractor(s) or Supplier(s). If CMAR is to self-perform under this alternative, CMAR shall submit a detailed explanation and demonstration of the cost of the Work it shall self-perform. CMAR shall 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 shall approve CMAR self-performance of any part of the Work and the cost therefore prior to accepting any GMP Proposal.

2.7.2.4 CMAR shall negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

2.7.2.5 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, CMAR 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. CMAR shall, at its discretion or at the request of the District's Representative, request written verification of any costs selected. CMAR shall provide an explanation of the qualifying factors for each selection.

2.7.3 In all other cases, CMAR 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. CMAR shall ensure that any such process is fully compliant with the above-referenced Arizona law.

2.7.3.1 CMAR shall develop Subcontractor interest, submit the names of a minimum of three (3) 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 (3) qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by the District to submit less than three (3) names. Without prior written approval by the District, no change in the District-approved Subcontractors shall be allowed.

2.7.3.2 If CMAR desires to self-perform certain portions of the Work, it shall comply with, and be subject to, the requirements set forth in Subsection 2.7.2.3 above.

2.7.3.3 If the District objects to any nominated Subcontractor or to any nominated self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor.

2.7.3.4 CMAR shall distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

2.7.3.5 CMAR shall receive, open, record and evaluate the bids. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals, CMAR, 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 shall be done with the District representative in attendance to observe and witness the process. CMAR shall resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the Work.

2.7.4 Upon completion of the Subcontractor selection process, CMAR shall submit a summary report to the District of the entire Subcontractor selection process. The report shall 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 above and the selected Subcontractors for each category of Work.

2.7.4.1 The selected Subcontractors shall provide a schedule of values, which shall be used to create the overall Project schedule of values.

2.7.5 CMAR shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

2.7.6 Regardless of the selection procedure, CMAR 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.

2.7.7 Regardless of the selection procedure and in any case, CMAR 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 CMAR's responsibility and obligation to perform as set forth in this Agreement or any 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 pre-construction phase services described in this Agreement shall be performed by CMAR in accordance with the most current updated/revised Project Master Schedule. Failure on the part of CMAR to adhere to the Project Master Schedule requirements for activities for which it is responsible shall be sufficient grounds for termination of this Agreement by Tubac Fire District.

3.1.1 Upon failure to adhere to the approved Project Master Schedule, the District may provide written notice to CMAR that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within three (3) days of CMAR's receipt of such notice.

3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the District, then said obligation shall be due and owing, and said time period shall 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 shall be timely made if completed no later than 4:00 p.m. (Kingman, AZ time) on the day of performance.

### **ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS**

#### **4.1 CONTRACT AMOUNT**

4.1.1 Based on the pre-construction phase services fee proposal submitted by CMAR and accepted by Tubac Fire District (which by reference is made a part of this Agreement); the District shall pay CMAR a fee not to exceed \$ \_\_\_\_\_ as follows:

For the basic services described in Article 2, CMAR shall receive a fee not to exceed:

\$\_\_\_\_\_

Additional services and allowances, as described in Section 4.3:

\$\_\_\_\_\_

Total Contract Amount, not to exceed:

\$\_\_\_\_\_

## **4.2 PAYMENTS**

4.2.1 Requests for monthly payments by CMAR for pre-construction phase services shall be submitted on the District's "Contract Payment Request" form and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall 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 shall be paid in accordance with the Work effort expended on that service during the preceding month.

4.2.2 Fees for CMAR and any Subconsultants shall be based upon the Hourly Rate Schedule included as Exhibit "B" attached hereto.

4.2.3 CMAR shall pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after CMAR has received payment for those services from the District. In no event shall the District pay more than ninety percent (90%) of the Contract Amount until final acceptance of all pre-construction phase services, and award of the final approved GMP for the entire Project by the District Board.

4.2.4 CMAR agrees that no charges or claims for costs or damages of any type shall 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 Agreement. Such delays or hindrances, if any, shall 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 CMAR to proceed to complete any services, in whole or in part 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.

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

4.2.6 If any service(s) executed by CMAR is delayed or suspended in whole or in part, for a period of more than one hundred eighty (180) days through no fault of CMAR, CMAR shall be paid for the services performed prior to the delay or suspension.

## **4.3 ADDITIONAL PRE-CONSTRUCTION PHASE SERVICES**

4.3.1 CMAR may be required to provide services in excess of those set forth in Article 2. Mark-ups are not authorized and only the reimbursables specifically identified below shall be reimbursed as authorized

herein. Any additional services shall be requested by the District, in writing, prior to the delivery of said services. There shall be no payment by the District for any additional services provided prior to or without the written request of the District for said services.

4.3.2 When authorized by the District, CMAR shall be entitled to reimbursement at cost of pre-construction 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 for hotel and meal per diem (not to exceed the State of Arizona General Accounting Office information (Current AZ State Rates – Lodging and Meal Index at <https://gao.az.gov/travel/welcome-gao-travel>) shall be reimbursed. CMAR shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed \$ \_ without further approval of the District.

(b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the Project shall be reimbursed. These costs shall not exceed \$ \_ 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 that may be requested by the District. The cost of such service shall not exceed \$ \_ (reimbursable allowance) without further approval by the District.

## **ARTICLE 5 - DISTRICT'S RESPONSIBILITIES**

5.1 The District, at no cost to CMAR, shall furnish the following information:

5.1.1 One (1) copy of data the District determines pertinent to the work. However, CMAR shall be responsible for searching the records and requesting information it deems reasonably required for the Project.

5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

5.1.3 The name of the person designated to be the District's representative during the term of this Agreement. The District's Representative has the authority to administer this Agreement and shall monitor CMAR'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 shall be directed to the District's Representative.

5.2 The District additionally shall:

5.2.1 Contract separately, with one or more design professional, to provide architectural and/or engineering design services for the Project. The scope of services for the design professional shall be provided to CMAR for its information. CMAR shall have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the District and the design professional.

5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by CMAR except for those copies whose cost has been reimbursed by the District.

5.2.3 Provide CMAR with adequate information in its possession or control regarding the District's requirements for the Project.

5.2.4 Give prompt written notice to CMAR 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 CMAR that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within three (3) days of CMAR's receipt of such notice.

5.2.5 Notify CMAR of changes affecting the budget allocations or schedule.

5.2.6 The District's Representative, shall have authority to approve the Project Budget and Project Master Schedule, and render decisions and furnish information the District's Representative deems appropriate to CMAR.

## **ARTICLE 6 – AGREEMENT CONDITIONS**

### **6.1 PROJECT DOCUMENTS AND COPYRIGHTS**

6.1.1 TFD 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) files, and other related documents which are prepared specifically in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of TFD and are to be delivered to TFD's Representative before the final payment is made to CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of CMAR, which consent CMAR shall not unreasonably withhold, TFD agrees to hold CMAR 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.

6.1.2 CMAR 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 CMAR, its Subconsultants or personnel, during the course of performing this Agreement or arising out of the Project shall belong to CMAR.

6.1.3 License to District for Reasonable Use: CMAR hereby grants, and shall 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 Agreement. This license shall 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 Subsection 6.1.1 above applies.

6.1.4 Documents to Bear Seal: When applicable and required by state law, CMAR and its Subconsultants shall endorse by an Arizona professional seal all plans, works, and Deliverables prepared by

them for this Agreement.

6.1.5 Records Inspection: The District and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine CMAR's records related to this Agreement.

6.1.6 Record Retention: CMAR shall comply with the District's record retention policy with regard to all records associated with the Project. This record retention requirement shall remain in effect following expiration of the Agreement or termination of the Agreement by either Party.

## **6.2 COMPLETENESS AND ACCURACY OF CMAR'S WORK**

6.2.1 CMAR shall 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 Agreement and shall at its sole expense correct its work or Deliverables. Any damage incurred by the District as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to CMAR to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Arizona would exercise under similar conditions. The fact that the District has accepted or approved CMAR's work or Deliverables shall in no way relieve CMAR of any of its responsibilities under this Agreement, nor does this requirement to correct the work or Deliverables constitute a waiver of any claims or damages otherwise available by law or Agreement to the District. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Breckenridge.

## **6.3 ALTERATION IN CHARACTER OF WORK**

6.3.1 In the event an unanticipated or unforeseen alteration or modification in the character of Work or Deliverables results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Master Schedule, the Work or Deliverables shall nonetheless be performed as directed by the District. However, before any altered or modified Work begins, a Change Order or Amendment shall be approved and executed by the District and CMAR. Such Change Order or Amendment shall not be effective until approved by the District.

6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to CMAR may accordingly be adjusted by mutual agreement of the contracting parties.

6.3.3 No claim for extra work done, or materials furnished, by CMAR shall be allowed by District except as provided herein, nor shall CMAR do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by CMAR without such prior written authorization shall be at CMAR's sole jeopardy, cost, and expense, and CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished shall be made.

## **6.4 DATA CONFIDENTIALITY**

6.4.1 As used in this Agreement, data ("**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 CMAR in the performance of this Agreement.

6.4.2 The parties agree that all Data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to CMAR in connection with CMAR's performance of this Agreement is confidential and proprietary information belonging to the District.

6.4.3 CMAR shall not divulge Data to any third party without prior written consent of the District. CMAR shall not use the Data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following Data:

6.4.3.1 Data, which was known to CMAR prior to its performance under this Agreement unless such data was acquired in connection with work performed for the District;

6.4.3.2 Data which was acquired by CMAR in its performance under this Agreement and which was disclosed to CMAR by a third party, who to the best of CMAR's knowledge and belief, had the legal right to make such disclosure and CMAR is not otherwise required to hold such data in confidence; or

6.4.3.3 Data which is required to be disclosed by CMAR by virtue of law, regulation, or court.

6.4.4 In the event CMAR is required or requested to disclose Data to a third party, or any other information to which CMAR became privy as a result of any other Agreement with the District, CMAR shall first notify the District as set forth in this Article of the request or demand for the Data. CMAR shall 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.

6.4.5 CMAR, unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the District, shall promptly deliver, as set forth in this section, a copy of all Data to the District. All Data shall continue to be subject to the confidentiality agreements of this Agreement.

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

## **6.5 PROJECT STAFFING**

6.5.1 Prior to the start of any work or Deliverables under this Agreement, CMAR shall submit to the District, an organization chart for CMAR 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 shall be involved in performing the services prescribed in this Agreement. Unless otherwise informed, the District hereby acknowledges its acceptance of such personnel to perform such services under this Agreement. In the event CMAR desires to change such key personnel from performing such services under this Agreement, CMAR shall submit the qualifications of the proposed substituted personnel to the

District for prior approval. Key personnel shall include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 CMAR shall 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 Agreement throughout the period of those services. If the District objects, with reasonable cause, to any of CMAR's staff, CMAR shall 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.

## **6.6 INDEPENDENT CONTRACTOR**

6.6.1 CMAR is and shall be an independent contractor and whatever measure of control the District exercises over the work or Deliverables pursuant to this Agreement shall be as to the results of the work only. No provision in this Agreement shall give, or be construed to give, the District the right to direct CMAR as to the details of accomplishing the work or Deliverables. These results shall comply with all applicable laws and ordinances.

## **6.7 SUBCONSULTANTS**

6.7.1 Prior to beginning the work or Deliverables, CMAR shall furnish, for the District's approval, the names of all Subconsultants to be used on this Project. All subsequent changes shall be subject to the approval of the District.

## **6.8 TERMINATION**

6.8.1 The District and CMAR 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 any or all services provided for in this Agreement, or terminate any portion of the Project for which services have been performed by CMAR.

6.8.2 In the event the District terminates any or all of the services or any part of the services as herein provided, the District shall so notify CMAR in writing, and CMAR shall immediately after receiving such notice, discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such termination.

6.8.3 CMAR, upon such termination, shall promptly deliver to the District all reports, estimates and other work or Deliverables entirely or partially completed, together with all unused materials supplied by the District.

6.8.4 CMAR shall appraise the work completed and submit an appraisal to the District for evaluation. The District shall have the right to inspect CMAR's Work or Deliverables to appraise the Work completed.

6.8.5 CMAR shall receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable direct costs and direct expenses attributable to such termination. The fee shall be paid in accordance with Article 4 of this Agreement, and shall be an amount mutually agreed upon by CMAR and the District. If there is no mutual agreement, the final determination shall be made in accordance with Section 6.9, "Disputes". However, in no event shall the fee exceed that set forth in Article 4

or as amended in accordance with Section 6.3 above, "Alteration in Character of Work". The District shall make the final payment within sixty (60) days after CMAR has delivered the last of the partially or otherwise completed Work items and the final fee has been agreed upon.

## **6.9 DISPUTE AVOIDANCE AND RESOLUTION**

6.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CMAR 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.

6.9.2 CMAR and the District shall first attempt to resolve disputes or disagreements at the field level through discussions between CMAR's Representative and the District's Representative.

6.9.3 If a dispute or disagreement cannot be resolved through CMAR's Representative and the District's Representative, CMAR's Senior Representative and the District's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.

6.9.4 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Santa Cruz County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

## **6.10 WITHHOLDING PAYMENT**

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

## **6.11 RECORDS/AUDIT**

6.11.1 Records of CMAR's direct personnel payroll, reimbursable expenses pertaining to the Project and records of accounts between the District and CMAR shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following final completion of the Project. The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The District reserves the right to decrease Contract Amount and/or payments made on this Agreement if, upon audit of CMAR's records, the audit discloses CMAR has provided false, misleading, or inaccurate cost and pricing data.

6.11.2 CMAR shall include a provision similar to Subsection 6.11.1 above in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Agreement 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 Agreement if the above provision is not included in Subconsultant, Subcontractor, and Supplier Agreements, 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.

## 6.12 INDEMNIFICATION

6.12.1 To the fullest extent permitted by law, CMAR agrees to defend, indemnify and hold harmless Tubac Fire 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 "indemnatee", 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 relating to, arising out of, or alleged to have resulted from the negligent, reckless, or intentional acts, errors, mistakes, omissions, work or services of the CMAR related to the Work or Deliverables done in fulfilling the terms of this Agreement, 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 CMAR to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that CMAR shall be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies.

## 6.13 NOTICES

6.13.1 Many notices or demands required to be given, pursuant to the terms of this Agreement, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested at the address set forth below **and** to legal counsel for the party to whom the notice is being given.

To Tubac Fire District:	Ben Guerrero, Fire Chief Tubac Fire District 2227 East Frontage Road Tubac, AZ 85646
To CMAR	---(name)--- ---(firm)--- ---(address)--- ---(the City, state)---
To:	---(name)--- ---(firm)--- ---(address)--- ---(the City, state)---
Copy to: Breckenridge (if applicable)	Klindt D. Breckenridge, President 1735 East Fort Lowell Road, Suite 12 Tucson, AZ 85719

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

**6.14 COMPLIANCE WITH ALL LAWS**

6.14.1 CMAR will comply with all applicable Federal, State and County laws, regulations and policies.

6.14.2 CMAR 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. CMAR agrees to comply with these laws in performing the Contract Documents and to permit the District to verify such compliance.

**6.15 CONFLICT OF INTEREST**

6.15.1 To evaluate and avoid potential conflicts of interest, CMAR shall provide written notice to the District, as set forth in this section, of any work or services performed by CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the District. Such notice shall be given at least seven (7) business days prior to commencement of the Project by CMAR for a third party, or at least seven (7) business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to:

Ben Guerrero, Fire Chief  
Tubac Fire District  
2227 East Frontage Road  
Tubac, AZ 85646

6.15.2 Actions considered to be adverse to the District under this Agreement include but are not limited to:

(a) Using Data, as defined in this Agreement, acquired in connection with this Agreement 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 CMAR or its employees independently of performing the services under this Agreement, without the prior written consent of the District.

6.15.3 CMAR represents that except for those persons, entities and projects previously identified in writing to the District, the services to be performed by CMAR under this Agreement 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.

6.15.4 CMAR's failure to provide a written notice and disclosure of the information as set forth in this

section shall constitute a material breach of this Agreement.

**6.16 CONTRACTOR'S LICENSE**

6.16.1 Prior to award of this Agreement, CMAR shall provide to the District, its Contractor's License Classification and number and its Federal Tax I.D. number.

**6.17 SUCCESSORS AND ASSIGNS**

6.17.1 The District and CMAR and their partners, successors, assigns, and legal representatives shall each be bound to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the District nor CMAR shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. In no event shall any contractual relationship be created or be construed to be created as between any third party and the District. Notwithstanding the District's consent to assignment, CMAR as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms, and conditions of this Agreement.

**6.18 FORCE MAJEURE**

6.18.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Agreement 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 shall be excused, but only for the period of the delay. The time for performance of the act shall be extended for a period equivalent to the period of delay.

**6.19 COVENANT AGAINST CONTINGENT FEES**

6.19.1 CMAR 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 Board or any employee of the District has any interest, financially, or otherwise, in CMAR. The District shall in the event of the breach or violation of this warranty, have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**6.20 NON-WAIVER PROVISION**

6.20.1 The failure of either party to enforce any of the provisions of this Agreement or to require performance by 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 this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

**6.21 JURISDICTION**

6.21.1 This Agreement 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. An action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Santa Cruz County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

**6.22 SURVIVAL**

6.22.1 All warranties, representations and indemnifications by CMAR shall survive the completion or termination of this Agreement.

**6.23 MODIFICATION**

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

**6.24 SEVERABILITY**

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

**6.25 INTEGRATION**

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

**6.26 TIME IS OF THE ESSENCE**

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

**6.27 THIRD PARTY BENEFICIARY**

6.27.1 This Agreement shall not be construed to give any rights or benefits in the Agreement to anyone other than the District and CMAR. All duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the District and CMAR and not for the benefit of any other party.

**6.28 COOPERATION AND FURTHER DOCUMENTATION**

6.28.1.1 CMAR agrees to provide the District such other duly executed documents as may be reasonably requested by the District to implement the intent of this Agreement.

**6.29 CONFLICT IN LANGUAGE**

6.29.1.1 All Work or Deliverables performed shall conform to all applicable City codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement shall prevail.

**6.30 CANCELLATION FOR CONFLICT OF INTEREST**

6.3.1 All parties hereto acknowledge that this Agreement is subject to cancellation for conflict of interest by the District pursuant to the provisions of §38-511, Arizona Revised Statutes.

**6.31 CONFIDENTIALITY OF PLANS & SPECIFICATIONS**

6.31.1 Any plans or specifications received by CMAR regarding the Project are for official use only. CMAR may not share them with others except as required to fulfill Agreement obligations with the District.

**ARTICLE 7 - INSURANCE**

CMAR shall procure and maintain for the duration of this Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work or Deliverables hereunder by CMAR, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the design phase or during the construction phase shall be defined in a separate Agreement associated with the construction phase. CMAR shall cause all Subcontracts to contain identical terms and conditions to those included in this Article.

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

**7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE**

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

7.1.1.1 Commercial General Liability-Occurrence Form

General Aggregate/per project	\$2,000,000/\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000



Each Occurrence \$1,000,000

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

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

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

7.1.1.3 Workers Compensation and Employers Liability

The CMAR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes.

**Additional Insured Status.** The insurance coverage, except Workers' Compensation, required by this Agreement, shall name the District, its agents, representatives, directors, officials, employees, and officers, as additional insured AND be accompanied by the required endorsement. Such evidence of additional insured status shall be subject to the approval of the Risk Management Department of the Tubac Fire District. The absence of acceptable insurance and endorsement shall be deemed a breach of this agreement.

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

**7.2 OTHER INSURANCE REQUIREMENTS**

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

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

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

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

7.2.2 CMAR's insurance coverage shall be primary insurance with respect to the District, its officers,

officials, agents, and employees. Insurance or self-insurance maintained by the District, its officers, officials, agents, and employees shall be in excess of CMAR's insurance and shall not contribute to it.

7.2.3 CMAR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by CMAR and its Subcontractors shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

7.2.4 The policies shall contain a waiver of subrogation against the District, its officers, officials, agents, and employees for losses arising from Work performed for the District.

7.2.5 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer shall agree to waive all rights of subrogation against the District, its officers, officials, agents, and employees for losses arising from work performed for the District.

### **7.3 SUBCONSULTANT INSURANCE**

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

### **7.4 NOTICE OF CANCELLATION**

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

Ben Guerrero, Fire Chief  
Tubac Fire District  
2227 East Frontage Road  
Tubac, AZ 85646

### **7.5 ACCEPTABILITY OF INSURERS**

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

### **7.6 VERIFICATION OF COVERAGE**

7.6.1 CMAR shall furnish the District, Certificates of Insurance (ACORD form or equivalent approved by the District) with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement(s) that restricts or limits coverages shall be clearly noted on the Certificate of Insurance.

7.6.2 All certificates and endorsements are to be received and approved by the District before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to the earlier of

commencement of work under this Agreement or signing of 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 shall constitute a material breach of this Agreement.

7.6.3 All Certificates of Insurance required by this Agreement shall be sent directly to the Contracts Division. The Project Number and Project description shall be included on the Certificates of Insurance. The District reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

**7.7 APPROVAL**

7.7.1 Any modification or variation from the insurance requirements in this Agreement shall be approved by the District, whose decision shall be final. Such action shall not require a formal Agreement amendment, but may be made by administrative action.

This Agreement shall 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 Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2024.

TUBAC FIRE DISTRICT \_\_\_\_\_, CMAR

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

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

ATTEST:  
  
\_\_\_\_\_

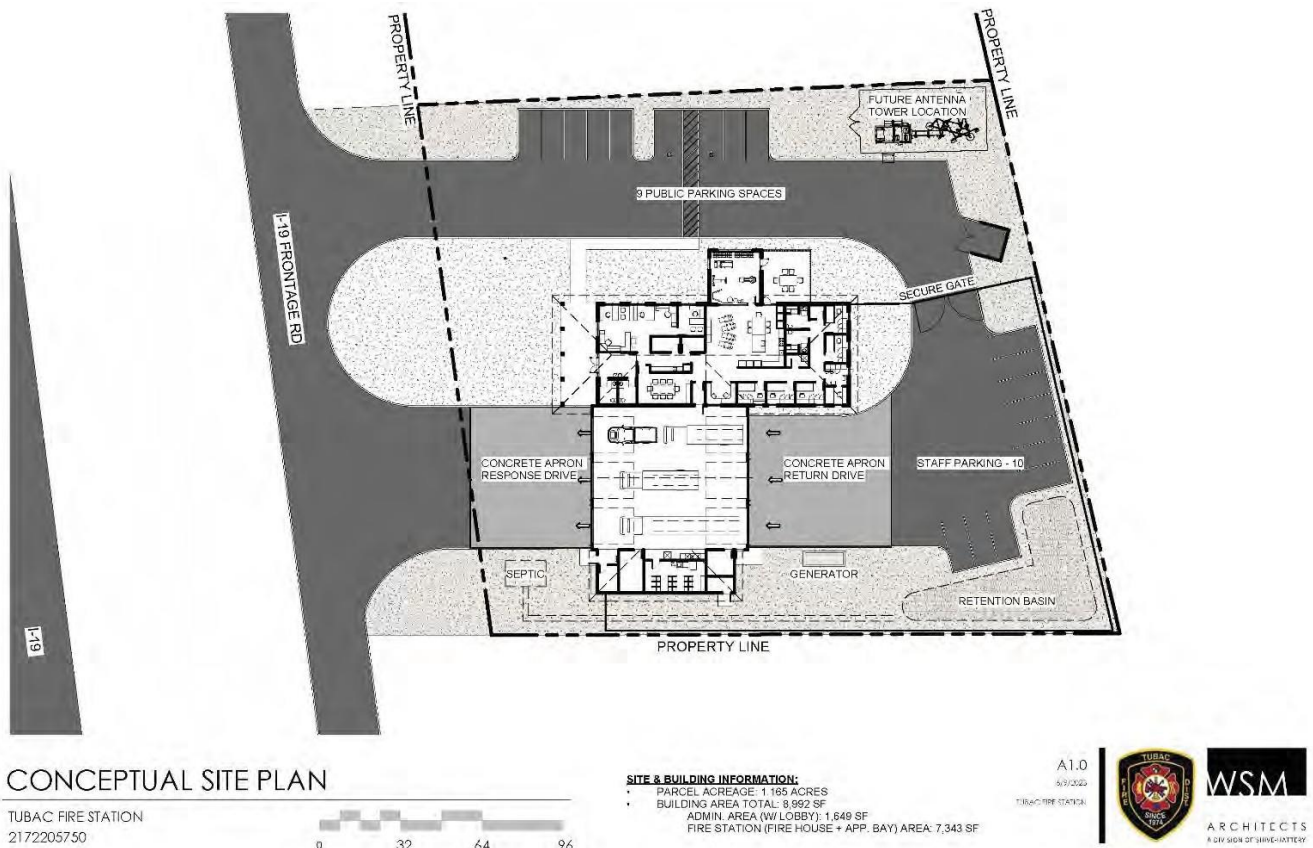
APPROVED AS TO FORM:  
  
\_\_\_\_\_

District Legal Representative

## EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the pre-construction phase service services specified in this Agreement are to be performed:

Design an approximately 9,000 square foot fire station with three equipment apparatus bays in general accordance with the conceptual plan shown below at 2227 East Frontage Road in Tubac Arizona.





**DEPARTMENTS**

ADMIN

FIRE HOUSE

## CONCEPTUAL FLOOR PLAN

TUBAC FIRE STATION  
2172205750



### SITE & BUILDING INFORMATION:

- PARCEL ACREAGE: 1.165 ACRES
- BUILDING AREA TOTAL: 8,992 SF
- ADMIN AREA (W/ LOBBY): 1,849 SF
- FIRE STATION (FIRE HOUSE + APP. BAY) AREA: 7,343 SF

A2.0

6/11/2020

TUBAC FIRE STATION



**EXHIBIT B – HOURLY RATE SCHEDULE**

The schedule of hourly labor rates for employees of CMAR and its Subconsultants follow and are based on the approved proposal submitted to the District on \_\_\_\_\_.

**LIST OF CLASSIFICATIONS:**

<u>Classification</u>	<u>Direct Labor Rate</u>	<u>Total Labor Rate</u>
-----------------------	--------------------------	-------------------------

### EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP proposal(s) Submittals; one (1) copy for review, eight (8) copies shall be requested by the District's Project Representative prior to Agreement execution. The eight (8) copies shall be punched and bound.

#### Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Master Schedule
7. MBE/WBE Requirements / Utilization Form / Letter of Intent

1. Scope of work shall consist of a brief description of the work to be performed by CMAR and major points that CMAR and the District shall be aware of pertaining to the scope.

2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

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

**PROJECT #:**

**DATE:**

**PROJECT NAME:**

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

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's Project Representative.**)

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

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

**The service agreement you are currently reviewing is a preliminary draft and is subject to potential changes before the final agreement is accepted. If you have any questions or require further clarification during this review process, please do not hesitate to reach out.**



