

**CONSTRUCTION MANAGER AT RISK
DESIGN CONSULTANT CONTRACT**

PROJECT TITLE: Multi-Generation/ Swim Facility
PROJECT NO: 33009

This Agreement is made and entered into by and between the City of Maricopa, Arizona, a municipal Corporation, hereinafter called the CITY, and Architekton, Inc., an Arizona corporation, hereinafter called DESIGN CONSULTANT.

WHEREAS, DESIGN CONSULTANT represents DESIGN CONSULTANT has the expertise and is qualified to perform the services described in this Agreement; and

WHEREAS, the Mayor and City Council of the City of Maricopa are authorized and empowered by the provisions of the City Code to execute Agreements for Professional Services; and

WHEREAS, the Parties intend to have this Project designed and constructed using a Construction Manager at Risk method with DESIGN CONSULTANT being a part of a Design Team.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the CITY and DESIGN CONSULTANT, as follows:

1. **DESCRIPTION OF PROJECT**: The Project known as the Multi-generation / Swim Facility will be an approximately 54,000 sq. ft. With site improvements it will occupy approximately eight (8) to ten (10) acres located at the southeast corner of Bowlin Road and John Wayne Pkwy, Maricopa, Arizona. The Project is more specifically described in the Exhibits attached hereto and incorporated herein by reference.
2. **DEFINITIONS**: Words used in this Agreement which are defined in CITY's General Conditions for Construction Projects shall have the meaning stated therein. DESIGN CONSULTANT is the Project Designer as defined in said General Conditions.
3. **SCOPE OF WORK**: DESIGN CONSULTANT shall design the Project as more specifically described in Exhibit A attached hereto and incorporated herein by reference.
4. **DESIGN TEAM**: DESIGN CONSULTANT shall be a part of and participate together with the Design Team and shall attend meetings with, provide information to and cooperate with the person retained by CITY to be the Construction Manager at Risk (CM@RISK).
5. **FEE FOR SERVICES**: For services described in paragraph 3 of this Agreement, the CITY shall pay DESIGN CONSULTANT a fee not to exceed the sum of One Million Four Hundred Fifty-One Thousand Two Hundred and Fifteen dollars (\$1,451,215) at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit B and made a part hereof by reference. Payment will be made monthly on the basis of progress reports corresponding with the rates and charges listed on the fee schedule and showing the number of hours or other basis to determine the fee earned to that date. An Application and Certification for Payment Sheet must be provided. In addition, the following must also be included with each application for payment: a clear, detailed invoice reflecting items being billed for reimbursables: a summary sheet showing percentage of work completed to date; amount/percent billed to date; current status of all tasks within a project; and any/all backup documentation supporting the above items. Work schedule updates shall also be included in the monthly progress payment requests.

6. PERIOD OF SERVICE:

- A. Following receipt of a "Notice to Proceed" with the design work. DESIGN CONSULTANT shall complete the design and have all documents ready for construction proposals within two hundred and thirty (230) calendar days of the date indicated on the Notice to Proceed.
- B. The Design Services for preparation of design and construction document period will be approximately 230 days. Following the "Notice To Proceed" for construction of the Project. DESIGN CONSULTANT shall perform the construction administration portion of this Agreement until completion of the construction by the CM@RISK.
- C. DESIGN CONSULTANT shall prepare and deliver to CITY record documents, accumulating contractor redlines, ASI and RFI sketches taped to the contractor as-built set, organized and scanned within twenty eight (28) days of the date of receipt of the red line drawings from the CM@Risk.
- D. DESIGN CONSULTANT shall complete all services specified herein in accordance with the mutually agreed upon Program Manager's schedule and as discussed with the CM@Risk. In the event delays are experienced beyond the control of DESIGN CONSULTANT, the completion date may be extended as mutually agreed upon by CITY and DESIGN CONSULTANT.

7. OPINIONS OF PROBABLE COSTS (ESTIMATES): Any opinions of probable project cost or probable construction cost provided by DESIGN CONSULTANT are made on the basis of information available to DESIGN CONSULTANT and on the basis of DESIGN CONSULTANT's experience and qualifications, and represents its best judgment as an experienced, licensed and qualified professional. However, since DESIGN CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost DESIGN CONSULTANT prepares. The DESIGN CONSULTANT is responsible for advising and consulting with the CITY on cost. DESIGN CONSULTANT is not responsible for providing formal estimates, this is the CM@Risk responsibility.

8. REPORTS & APPROVALS: All work shall be subject to the approval of CITY and each phase of the work will be submitted to CITY in accordance with the mutually agreed upon Program Manager's schedule and in the format prescribed by CITY. When requested by CITY, DESIGN CONSULTANT will attend Council meetings and provide finished documents including correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

9. STANDARD OF PERFORMANCE:

- A. This design Agreement has been awarded to DESIGN CONSULTANT based on their proposal that those personnel and consultants listed in Exhibit C attached hereto will perform the portions of the work listed on said Exhibit C. DESIGN CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.
- B. DESIGN CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. DESIGN CONSULTANT shall correct any such deficiencies without additional compensation or cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.
- C. DESIGN CONSULTANT shall be familiar with CITY's standard details and specifications and other relevant CITY regulations. DESIGN CONSULTANT shall ensure there are no conflicts among the Contract

Documents including, but not limited to, the CITY's General Conditions for Construction Projects, the plans and specifications prepared by DESIGN CONSULTANT, any standard details or specifications incorporated therein by reference, and the Construction Contract. The DESIGN CONSULTANT is responsible, along with his designers, for attesting to the design correctness and scaling the design documents.

- D. DESIGN CONSULTANT shall be responsible for the completeness and accuracy of his/her work prepared or compiled under obligation for this Project and shall correct, at his/her expense, all errors or omissions therein, which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the Project on architectural or engineering drawings and specifications shall be accomplished by the DESIGN CONSULTANT. The cost of the design necessary to correct those errors attributable to the DESIGN CONSULTANT and any damage incurred by the CITY as a result of additional construction costs caused by such engineering and/or architectural errors shall be chargeable to the DESIGN CONSULTANT. The fact that the CITY has reviewed or approved the DESIGN CONSULTANT's work shall in no way relieve the DESIGN CONSULTANT of any of DESIGN CONSULTANT's responsibilities.

10. INDEMNIFICATION:

- A. For Professional Liability: To the fullest extent permitted by law, DESIGN CONSULTANT shall indemnify and hold harmless the City of Maricopa, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoM) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, reasonable attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors in the performance of this Agreement or of any other person for whose errors, mistakes or omissions DESIGN CONSULTANT may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoM (other than DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Agreement.
- B. For all Other Liabilities. Hazards and Exposures: To the fullest extent permitted by law, DESIGN CONSULTANT shall indemnify and hold harmless the City of Maricopa, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoM) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Agreement and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of DESIGN CONSULTANT and alleged to have been caused in whole or in part by any act or omission of DESIGN CONSULTANT, anyone directly or indirectly employed by them or anyone for whose acts DESIGN CONSULTANT may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of DESIGN CONSULTANT, its agents, employees or representatives to fulfill DESIGN CONSULTANT's obligations under this Agreement. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoM, (other than DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Agreement.
- C. Consequential Damages: The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this Agreement in dollars as payable by the City of Maricopa

- D. Insurance does not limit liability: The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

11. INSURANCE REQUIREMENTS:

11.1 General Requirements:

- A. DESIGN CONSULTANT at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. With the exception of professional liability policies, policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this Agreement.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the DESIGN CONSULTANT may be withheld until these requirements have been met, or at the option of the CITY, the CITY may pay the Renewal Premium and withhold such payments from any monies due the DESIGN CONSULTANT.
- E. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City of Maricopa, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. DESIGN CONSULTANT's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this Agreement, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of DESIGN CONSULTANT's acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of DESIGN CONSULTANT. DESIGN CONSULTANT shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require DESIGN CONSULTANT to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will not be accepted except with permission of the Management Services Director/designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the DESIGN CONSULTANT with reasonable promptness in accordance with the DESIGN CONSULTANT's information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this Agreement, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the DESIGN CONSULTANT until such time as the DESIGN CONSULTANT shall furnish such additional security covering such claims as may be determined by the CITY.

11.2 Proof of Insurance - Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, DESIGN CONSULTANT shall furnish to CITY Certificates of Insurance, issued by DESIGN CONSULTANT's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Maricopa five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of DESIGN CONSULTANT, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. CITY reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise DESIGN CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve DESIGN CONSULTANT from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of DESIGN CONSULTANT's obligations under this Agreement.

11.3 Required Coverage

Such insurance shall protect DESIGN CONSULTANT from claims set forth below which may arise out of or result from the operations of DESIGN CONSULTANT under this Agreement and for which DESIGN CONSULTANT may be legally liable, whether such operations be by the DESIGN CONSULTANT or by a Sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the DESIGN CONSULTANT's employees;

- D. Claims for damages insured by usual personal injury liability coverage;
- E. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof;
- G. Claims for bodily injury or property damage arising out of completed operations;
- H. Claims involving contractual liability insurance applicable to the Contractor's obligations under the Indemnification Agreement;
- I. Claims for injury or damages in connection with one's professional services;

11.3.1 Commercial General Liability - Minimum Coverage Limits:

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Agreement Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for DESIGN CONSULTANT's operations and products, and completed operations.

11.3.2 General Liability - Minimum Coverage Limits

- A. The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Contractors, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.
- B. Automobile Liability: DESIGN CONSULTANT shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the DESIGN CONSULTANT's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293 or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

11.3.3 Worker's Compensation and Employer's Liability:

DESIGN CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over DESIGN CONSULTANT's employees engaged in the performance of the work or services; and. Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, DESIGN CONSULTANT will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of DESIGN CONSULTANT.

11.3.4 Professional Liability:

DESIGN CONSULTANT shall maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by DESIGN CONSULTANT, or any person employed by DESIGN CONSULTANT, with a claims made policy limit of not less than \$1,000,000.

12. ALTERNATE DISPUTE RESOLUTION:

- 12.1 Alternative Dispute Resolution. The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by DESIGN CONSULTANT pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 12.2 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 12.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Pinal County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Pinal County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 12.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

13. AMENDMENTS: Whenever a change in the Scope of Work contemplated in this Agreement is determined to be necessary, the work will be performed in accordance with this Agreement provided, however, that BEFORE such work is started, an amendment shall be executed by CITY and DESIGN CONSULTANT. Additions to, modifications of, or deletions from the Project provided herein may be made and the compensation to be paid to DESIGN CONSULTANT may be adjusted accordingly by mutual written agreement of the contracting parties. It is agreed that no claim for extra work by DESIGN CONSULTANT will be allowed by CITY except as provided herein, nor shall DESIGN CONSULTANT do any work not covered by this Agreement unless such work is authorized through an executed amendment.

14. TERMINATION WITHOUT CAUSE: CITY may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to DESIGN CONSULTANT specifying the termination date. Immediately after receiving such notice, DESIGN CONSULTANT shall discontinue advancing the work under this Agreement and shall deliver to CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY.

DESIGN CONSULTANT shall receive as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of DESIGN CONSULTANT(S) fee described in this Agreement under paragraph 5 and shall be in an amount to be agreed mutually by DESIGN CONSULTANT and CITY. CITY shall make this final payment within sixty (60) days after DESIGN CONSULTANT has delivered the last of the partially completed items.

15. TERMINATION WITH CAUSE

This Agreement may be terminated by CITY for cause should the DESIGN CONSULTANT fail to perform any

provision of this Agreement, including without limitation, for any of the following reasons:

- (a) DESIGN CONSULTANT abandons Work;
- (b) DESIGN CONSULTANT assigns or attempts to assign its rights or obligations under this Agreement or any part thereof to any third-party (without the prior written consent of CITY);
- (c) DESIGN CONSULTANT is adjudged bankrupt or insolvent, makes a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- (d) DESIGN CONSULTANT fails or refuses to perform any obligation under the Agreement, or fails to remedy such nonperformance within seven (7) days after its occurrence;
- (e) DESIGN CONSULTANT fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence; or
- (f) DESIGN CONSULTANT fails to achieve the required dates for performance required pursuant to the Agreement.

The CITY'S right of termination for cause as set forth herein shall be in addition to, and not a limitation of, any and all other remedies available to CITY at law, in equity, or under the terms and provisions of this Agreement.

16. OWNERSHIP OF DOCUMENTS: All documents, including, but not limited to, preliminary designs, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis, communications (e-mail, minutes, telephone, memos, etc.) and studies which are prepared in the performance of this Agreement are to be, and shall remain the property of CITY. DESIGN CONSULTANT shall furnish CITY, upon its request, originals or reproducible copies of technical specifications and copies of all other documents listed above. DESIGN CONSULTANT shall endorse, by his professional seal, all plans and engineering data furnished by it.

17. RE-USE OF DOCUMENTS: The parties agree the documents, drawings, specifications and designs, although the property of CITY, are prepared for this specific Project and are not intended nor represented by DESIGN CONSULTANT to be suitable for re-use for any other project. Any reuse without written verification or adaptation by DESIGN CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.

18. NO KICK-BACK CERTIFICATION: DESIGN CONSULTANT 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 City Council or any employee of the CITY has any interest, financially or otherwise, in the DESIGN CONSULTANT firm.

For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

19. CONFLICT OF INTEREST: DESIGN CONSULTANT stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement.

Pursuant to A.R.S. Section 38-511, CITY may cancel this Agreement within three (3) years after its execution,

without penalty or further obligation by CITY if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of CITY is, at any time while this Agreement is in effect, an employee of any other party to this Agreement in any capacity, or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

20. CONTROLLING LAW: The laws of the State of Arizona shall govern this agreement.

21. COMPLIANCE WITH ARIZONA PROCUREMENT LAW:

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the DESIGN CONSULTANT hereby warrants to the CITY that the DESIGN CONSULTANT and each of its subconsultants ("Subconsultants") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement.

The CITY retains the legal right to inspect the papers of any DESIGN CONSULTANT or Subconsultant employee who works on this Agreement to ensure that the DESIGN CONSULTANT or Subconsultant is complying with the Contractor Immigration Warranty. The DESIGN CONSULTANT agrees to assist the CITY in the conduct of any such inspections.

The CITY may, at its sole discretion, conduct random verifications of the employment records of the Design Consultant and any Subconsultants to ensure compliance with Contractors Immigration Warranty. The Design Consultant agrees to assist the CITY in performing any such random verifications.

The provisions of this Article must be included in any contract the DESIGN CONSULTANT enters into with any and all of its subconsultants who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Design Consultant or subconsultant. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the DESIGN CONSULTANT hereby certifies that they do not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the DESIGN CONSULTANT hereby certifies that they do not have scrutinized business operations in Sudan."

22. NO ASSIGNMENT: DESIGN CONSULTANT shall not assign, transfer, convey or subcontract this Agreement or the services to be rendered pursuant thereto without the prior written consent of CITY.

23. NOTICES: Any notice required under this Agreement shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

24. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply CITY is obligated to obtain the services described herein with only this particular DESIGN CONSULTANT.

25. UNCONTROLLABLE FORCES: CITY and DESIGN CONSULTANT shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but

not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

26. WAIVER OF TERMS AND CONDITIONS: The failure of CITY of DESIGN CONSULTANT to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

27. INDEPENDENT CONTRACTOR: DESIGN CONSULTANT shall at all times during performance of the services retain their status as independent contractor. DESIGN CONSULTANT's employees shall under no circumstances be considered or held to be employees or agents of CITY, and CITY shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or DESIGN CONSULTANT.

28. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between CITY and DESIGN CONSULTANT and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

29. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

30. AMERICANS WITH DISABILITIES ACT: This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The DESIGN CONSULTANT shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The DESIGN CONSULTANT shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this ____ day of February, 2012.

CITY OF MARICOPA

DESIGN CONSULTANT: Architekton, Inc.

MAYOR

ADDRESS FOR NOTICE:

City of Maricopa
P.O. Box 610
Maricopa, AZ 85139

ADDRESS FOR NOTICE:

Architekton, Inc.
464 S. Farmer Avenue, Suite 101
Tempe, AZ 85281

ATTEST:

City Clerk

ATTEST:

Secretary

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

DETAILED DESCRIPTION OF THE PROJECT AND DESIGN CONSULTANT SCOPE OF SERVICES

PROJECT TITLE: Multi-Generation/ Swim Facility
PROJECT NO. 33009
Maricopa, AZ.

I. PROJECT DESCRIPTION & SCOPE OF CONSTRUCTION:

DESIGN CONSULTANT will provide services for the design, permitting, development of construction documents, and specified construction administration for the development of a Multi-Generation/ Swim Facility located at the southwest corner of Bowlin Road and John Wayne Parkway, Maricopa, Arizona, all as more specifically described herein below.

The budget for facility design may include, but not be limited to, areas for activities as described in Exhibit B, and other associated functions. The exterior improvements may include, but not be limited to: outdoor swim facility, parking lot, landscaping and offsite road and utility improvements. A more detailed description is attached as Exhibit B.

DESIGN CONSULTANT shall provide all design services for the Project including, but not limited to, normal landscape, civil, mechanical and electrical engineering services.

DESIGN CONSULTANT shall participate as a team member along with the CITY and the CM@Risk, and shall communicate and share all information concerning the design.

II. ASSIGNMENT:

1. The design contract has been awarded to a DESIGN CONSULTANT based on their proposed personnel and specified consultants. Any deviations or substitutions of these team members must be pre-approved in writing by the City's representative. Those persons listed in Exhibit C will perform those portions of the work listed therein.

III. PROJECT SCHEDULE:

2. DESIGN CONSULTANT shall perform the services within the times set forth in the mutually agreed upon Program Manager's schedule. The Program Manager's schedule may be amended and modified after consultation with the CM@R, upon agreement between the DESIGN CONSULTANT and the CITY.
3. DESIGN CONSULTANT shall adhere to the Production Schedule described herein and such schedule may not be modified or deviated from without written consent of the CITY. DESIGN CONSULTANT shall revise and submit for review an updated schedule whenever it is demonstrated that the time for completion of the Project Design or of any of the partial completion points listed in the schedule is delayed by two (2) weeks or more. Such adjusted schedule will include a written explanation stating the reasons for the change and a plan for getting back on schedule. The DESIGN CONSULTANT shall take all reasonable actions necessary to get the Project back on schedule and CITY shall cooperate to assist DESIGN CONSULTANT.

IV. QUALITY CONTROL:

4. DESIGN CONSULTANT shall institute and comply with the Design Quality Control Plan as mutually agreed upon and approved by the City.

5. As a part of the project design DESIGN CONSULTANT shall develop a quality control plan for the entire construction phase. This Quality Control Plan shall establish what elements should and must be seen by each consultant during construction. Identify what is in the Project, which will be required to have a IBC "Special Inspection" by the design engineer.

V. PRELIMINARY RESEARCH:

As and for preliminary research before preparing the project design, DESIGN CONSULTANT shall:

6. Perform a Document Search for utility as-builts.
7. Perform a Document search for rights-of-way.
8. Perform a Document search for survey ties and benchmarks.
9. Perform a Document search for City policies, regulations, standards, design manuals and requirements, etc relevant to Project.
10. Research and/or obtain geotechnical reports and investigations, master plans, computer model data and field surveys.
11. Research all utility companies/agencies and acquire all available as-built and utility records.
12. Investigate existing conditions, make measured drawings, and verify accuracy of drawings or other information furnished by CITY.
13. DESIGN CONSULTANT shall provide a survey of the project area that includes complete topographical and property data of the immediate site. Design shall utilize established City of Maricopa benchmarks and reference locations of benchmarks on the plans, clearly define the benchmark location and elevation that will be utilized for construction of this facility.

VI. UTILITY/AGENCY COORDINATION:

14. Coordination with utility companies and agencies shall be in accordance with the latest version of the "Public Improvement Project Guide" (PIPG).
15. DESIGN CONSULTANT shall identify utility conflicts during the initial stages of the design process.
16. DESIGN CONSULTANT shall coordinate the design and installation of the utilities, which includes, but is not limited to, services for electric, communications, water, storm drainage, irrigation and sanitary systems, etc.
17. Easements for these utilities shall be identified early in the design stage of the Project and necessary information provided to the CITY to allow the CITY to complete acquisition during the design phase.
18. Engineers employed by DESIGN CONSULTANT shall provide the legal descriptions for the natural gas and electrical service easements.
19. DESIGN CONSULTANT shall submit preliminary plans, specifications, and design calculations to utilities/agencies for review and use during their design for their service improvements or any necessary relocations.

20. DESIGN CONSULTANT shall attend utility meetings to coordinate relocations with utility/agency and establish relocation schedules.
21. DESIGN CONSULTANT shall follow-up with the final design submittal for utility construction and coordination with the bid documents.
22. DESIGN CONSULTANT shall incorporate the utility/agency private developer construction requirements into the bid documents.

VII. GEOTECHNICAL INVESTIGATION:

23. DESIGN CONSULTANT shall consult with CITY to coordinate the performance of all soil and pavement borings necessary to complete their work. The CITY will be responsible for the Geotechnical Investigation
24. Sub-surface soil conditions, established by the geotechnical investigations, shall be incorporated into the bid documents in a manner usable to the excavation and foundation bidding and construction.

VIII. PROGRAMMING:

25. DESIGN CONSULTANT shall meet with City staff design/constructability team to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements. The CM@Risk shall be a team member.
26. DESIGN CONSULTANT shall perform a total of two (2) Public Information meetings (i.e. Public Outreach Visioning Session and Parks, Recreation and Libraries Advisory Committee). These will include preparing exhibits, and delivering a presentation, facilitating discussions and documenting meeting information exchange. The exhibits will include Design drawings as required for the meeting. CITY will advertise and promote the meetings.
27. DESIGN CONSULTANT shall facilitate "sub-committee" meetings to gather pertinent information from: CITY staff, key stakeholders and other CM@R Staff
28. DESIGN CONSULTANT shall prepare a "Program" which will include:
 - Establish construction budget in coordination with the CM@Risk
 - Complete documentation of site survey from preliminary work
 - Define new buildings space needs
 - Define new building space requirements and amenities necessary to accommodate planned activities in each space
 - Define site requirements
 - Create a matrix of spaces, sizes and amenities
29. Based on the mutually agreed-upon program, schedule and construction budget requirements, DESIGN CONSULTANT shall prepare, for approval by CITY, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components.
30. DESIGN CONSULTANT shall prepare a White Paper/Report on Operational Characteristics for the Multi-Generational/Swim Facility. The report shall also include pros and cons of operation by the CITY versus an outside agency and financial comparisons.

IX. SCHEMATIC DESIGN (30% Document Review):

When the design is approximately thirty percent (30%) complete, DESIGN CONSULTANT shall do the following:

31. Attend a CITY "pre-site" meeting with the CITY plans review and development staff.
32. Present initial schemes to CITY and its representatives (to potentially include a CM@Risk contractor). Staff will collaborate with designers to manipulate the plans and mutually decide on the best scheme.
33. The final scheme shall incorporate CITY'S comments (and potentially a contractors' comments) and be cleaned up for reference and presentation to the City Council if requested.
34. Attend a City Council meeting and brief the City Council, which will include preparing exhibits, rendering(s), computer graphic "fly-around", displaying and explaining such exhibits etc., to the City Council and public while documenting meeting information exchange.
35. Attend any other City Commission or committee meeting and brief the members, which will include preparing exhibits, renderings, computer graphic "fly-around", displaying and explaining such exhibits, etc., to members while documenting meeting information exchange.
36. Develop a site plan. Design shall utilize established City of Maricopa benchmarks and reference locations of benchmarks on the plans.
37. Collaborate with CITY to define their requirements for building systems.
38. Create an outline specification.
39. Prepare plans, elevations, sections, schedules and notes as required to fix and describe the Project as to civil, architectural, structural, mechanical, electrical, and special systems.
40. Perform code reviews and implement requirements into the design documents.
41. Value Engineer the design cooperatively with the entire design team including CM@R and CITY'S representatives. This effort will occur as early as effectively possible and consist of a focused meeting addressing: relationships of components, construction materials, and building systems.
42. Prepare vertical sections across the site and through the building.
43. Prepare elevation drawing(s) and, as required, perspective sketch of the exterior.
44. Complete a drainage analysis and provide solutions to mitigate the runoff.
45. Identify all necessary offsite improvements such as: streets, utilities, irrigation. etc., and depict the scope in a schematic design plan.
46. Submit the Project to the CITY Planning Department for Design Review as part of the Site Plan Review Process. The Site Plan Review Process requires presentation to and approval from the Planning & Zoning Commission and City Council.
47. Prepare a construction cost estimate for verification with the budget and re-design as necessary to re-align the design with the construction budget.

48. Submit to City's Project Manager for comment two (2) complete drawing sets with drainage & structural calcs, one of which shall be reproducible.
49. Until a GMP is accepted by all parties, the DESIGN CONSULTANT is responsible for calling all meetings, preparing the minutes, and distribution of the minutes.

X. DESIGN DEVELOPMENT (60% & 90% Document Review):

Based on the approved Schematic Design Documents and any adjustments authorized by CITY (which includes a contractor) in the program, schedule or construction budget, DESIGN CONSULTANT shall prepare, for approval by CITY, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. When the design is approximately sixty percent (60%) complete, DESIGN CONSULTANT shall do the following:

50. Allow and invite the City's Representative and CM@R to attend the regular weekly design coordination meetings. Attend a CITY "pre-site" meeting with the CITY plans review and development staff.
51. Review the current construction cost estimate for verification with the budget. Re-design as necessary to realign the design with the construction budget. Coordinate with CM@Risk.
52. Review and advise CITY with regard to the Guaranteed Maximum Price if submitted by CM@ Risk at completion of schematics.
53. Present a second briefing to CITY that shall include preparing exhibits, renderings, computer graphic "fly-around", briefing the CITY while documenting meeting information exchange.
54. Conduct a full document set (plans & specs) review in the presence of all consultants, CM@R and CITY'S representatives and any other stakeholders.
55. Continuous involvement with design team, CITY, CITY's Project Management, and CM@Risk. Submit for review of completed 60% design, to the CM@Risk and CITY'S Project Manager for comment three complete drawing sets, specifications, drainage & structural calcs, one of which will be reproducible. Include original redline drawings and comments received from previous review along with a review summary indicating action taken
56. Schedule review meeting with plan check staff to discuss review comments. Clarify with the plan check staff what the design challenges are and decide the method in which they will be resolved.

XI. CONSTRUCTION DOCUMENTS (90% Document Review):

Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by CITY, DESIGN CONSULTANT shall prepare, for approval by CITY, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. When the design is approximately ninety percent (90%) complete DESIGN CONSULTANT shall do the following:

57. Coordinate, meet, and team with CM@Risk on all design and constructability review.
58. Prepare plans, elevations, sections, schedules, notes and specifications as required to be able to bid (if necessary) and to construct the Project in its entirety.

59. Cover sheet to be provided by CITY on diskette (AutoCAD release 20084).
60. Provide the City of Maricopa with a copy of the AutoCAD files. Each building system shall be "layered" so as to be able to isolate trades or engineering from architectural components or vice versa.
61. Conduct a full document set (plans & Specs) review in the presence of all consultants, CM@R and CITY'S representatives.
62. Provide document coordination of work performed by separate contractors or by the CITY'S own forces (i.e.: systems furniture or exercise equipment provisions & installation, etc.).
63. Review/coordinate construction cost estimate for verification with the budget. Re-design as necessary to realign the design with the construction budget. Review and advise CITY with regard to the Guaranteed Maximum Price submitted by CM@ Risk.
64. Submit to CITY'S Project Manager and CM@Risk for comment three (3) complete drawing sets, specifications, drainage & structural calcs, one of which will be reproducible. Include original redline drawings and comments received from previous review along with a review summary indicating action taken.
65. Submit completed documents to Development Services for building permit. All plans, calculations and specifications will be stamped. The specifications will be 8-1/2" x 11" and in electronic format on diskette in Microsoft Word 2000. Plans will be black line prints as well as on diskette Auto CAD release 2004. Include redline reviewed drawings and comments received from previous review along with a review summary indicating action taken.
66. Pick-up plan review final comments and prepare stamped Mylar documents for reproduction. CITY will have the bid sets reproduced from these Mylar's.
- 67 Assist CITY in the evaluation of "substitutions and or-equals" and make a recommendation to accept or decline
68. Prepare addenda, for CITY'S Project Manager, for review and approval by CITY, CITY will distribute.

XIII. CONSTRUCTION ADMINISTRATION:

69. During the Construction phase of the Project DESIGN CONSULTANT shall do the following:

Note: A City staff member will be designated as the Project Manager and as CITY'S REPRESENTATIVE and will perform those functions listed in the City's General Conditions for Construction Projects as duties of the CITY REP. The DESIGN CONSULTANT will be designated the Project Designer and shall perform those functions listed in the City's General Conditions for Construction Projects as duties of the Project Designer, but shall also perform the following functions: (Designers Construction Administrator role is defined below.)

70. Attend and participate in the pre-construction conference for the purposes of establishing lines of communication, project protocol as well as answering design questions.
71. Assist CITY with the review of contractor's schedules, and then make a recommendation regarding approval.
72. Assist CITY in the review of the Contractors "value engineering" suggestions and then make a recommendation. (Most of this will already have occurred during the Design phase with the CM@R, however, there may be value engineering suggestions due to conditions found in the field.)

73. Evaluate contractor claims and disputes between CITY and contractor and provide a written determination to CITY within seven (7) days of the date such matter is submitted to DESIGN CONSULTANT.
74. In the event of a claim or dispute by contractor, interpret the requirements of the Contract Documents and judge the acceptability of the Work thereunder. Make written recommendations to the CITY on all claims of the Contractor related to; the acceptability of the work, or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work, or additional work as deemed necessary by the CITY (within 7 days).
75. Respond to RFI's and issue necessary interpretations and clarifications of the contract documents (within 36 hours unless the architect requires input and review by the subconsultant team).
76. Receive, log, review and approve/disapprove Shop Drawings, calculations, samples, and test results (within 10 business days), as requested in coordination with the CM@Risk contractor.
77. Construct a color/sample board of approved finishes submittals.
78. Perform site visits at a rate of 4-8 hours per week, depending on work in progress, during construction. During these visits, produce "field reports" documenting progress and issues. This effort does not include and is independent of special inspections.
79. Participate in scheduled field management meetings.
80. Perform "IBC Special Inspections" as required.
81. Evaluate and verify payment applications, with the CITY, based on designer's on-site observations, data and schedule. Make a recommendation regarding approval.
82. Conduct with CITY an inspection to determine if Project is substantially complete. Substantial completion inspection is to determine if the work is completed to the standard required by the contract documents. Prepare a preliminary punch list and provide to CITY.
83. Conduct with CITY a final inspection to assist CITY to develop the final punch list and assist in final re-inspection.
84. DESIGN CONSULTANT shall determine when the Project is complete and recommend, in writing, to CITY, acceptance of the Project but only after DESIGN CONSULTANT has performed a final inspection which confirms that the contractor has fulfilled all obligations under their contract and is entitled to final payment. Such a recommendation is DESIGN CONSULTANT's written notice to CITY and Contractor that the work is complete and the Project is acceptable.
85. Receive, review and approve/disapprove Operations & Maintenance manuals (within 2 weeks).

XIV. POST CONSTRUCTION:

86. DESIGN CONSULTANT shall prepare and deliver to CITY, record drawings of the constructed work on 4 mil Mylar, together with complete electronic files for the Project in AutoCAD release 20084. As-built information will be obtained from redlined drawings prepared by the contractor. DESIGN CONSULTANT shall provide to CITY six (6) electronic copies (CD-ROM) of the drawings in AutoCAD 2004 for CITY and for distribution to affected utilities.

EXHIBIT B

DESIGN CONSULTANTS SCOPE AND FEE PROPOSAL

EXHIBIT C

RSOQ AND DESIGN CONSULTANT'S RESPONSE