

## DESIGN CONSULTANT CONTRACT

PROJECT TITLE: Fire/Medical Administration Facility  
CITY PROJECT NO: 38022

This Agreement is made and entered into by and between the City of Maricopa, an Arizona municipal Corporation, hereinafter called the CITY, and Perlman Architects of AZ, Inc., a Nevada 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 Fire/Medical Administration Facility will be an approximately 5,000 – 7,000 sq. ft. office space and 5,000 sq. ft. warehouse/storage with site improvements it will occupy approximately 2.5 acres located at the northwest corner of Garvey Avenue and Estrella Parkway in Maricopa, Arizona. The Project is more specifically described in Exhibit A and Exhibit B 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 and Exhibit B 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 SIX HUNDRED FORTY SEVEN THOUSAND SEVEN HUNDRED TWENTY FIVE and 00/100 dollars, including a bid amount of FIVE HUNDRED NINETY SEVEN THOUSAND SEVEN HUNDRED TWENTY FIVE and 00/100 dollars (\$597,725.00) and an owner's allowance of FIFTY THOUSAND and 00/100 dollars (\$50,000.00), 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 four hundred and twenty (420) calendar days of the date indicated on the Notice to Proceed.
- B. DESIGN CONSULTANT shall perform the construction administration portion of this Agreement until completion of the construction by the CM@RISK.
- C. 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 and/or Planning & Zoning Commission 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 B attached hereto will perform the portions of the work listed on said Exhibit B. 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 subconsultants, 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.
- E. While performing the services, DESIGN CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of DESIGN CONSULTANT's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. DESIGN CONSULTANT shall be responsible for all errors and omissions DESIGN CONSULTANT commits in the performance of this Agreement that are a breach of this standard.
- F. DESIGN CONSULTANT, and any subcontractors or individuals hired by DESIGN CONSULTANT to perform the services under this Agreement, shall keep any information concerning CITY matters confidential and agree that they will not make any statement, give an interview or provide any information to any person, corporation or other entity, including without limitation any media source, in relation to the project or the services to be provided under this Agreement without the prior written consent of CITY. DESIGN CONSULTANT, and any subcontractors or individuals hired by DESIGN CONSULTANT, agree not to disclose to any other person or entity (unless required by law) any confidential information concerning CITY matters during and after this Agreement.

#### 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 A- 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. RECORDS: Records of DESIGN CONSULTANT's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to CITY for inspection on request. DESIGN CONSULTANT shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by CITY personnel during regular business hours.

18. 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.

19. 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.

20. 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.

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

22. COMPLIANCE WITH ARIZONA PROCUREMENT LAW:

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.

DESIGN CONSULTANT shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01

23. 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.

24. 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.

25. 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.

26. 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.

27. WAIVER OF TERMS AND CONDITIONS: The failure of CITY or 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.

28. 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.

29. 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.

30. 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.

31. FEDERAL REGULATIONS: Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. DESIGN CONSULTANT acknowledges, by signature to this agreement, that: DESIGN CONSULTANT is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; DESIGN CONSULTANT's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

32. 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 1<sup>st</sup> day of May, 2018.

CITY:

City of Maricopa, an Arizona municipal Corporation

\_\_\_\_\_  
Christian Price, Mayor

DESIGN CONSULTANT:

Perlman Architects of AZ, Inc., a Nevada Corporation

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

ADDRESS FOR NOTICE

City of Maricopa  
Attn: City Manager  
39700 W Civic Center Plaza  
Maricopa, AZ 85138  
Phone: (520) 316-6811

ADDRESS FOR NOTICE

Perlman Architects of AZ., Inc.  
Attn: Kenneth Powers  
4808 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016

ATTEST:

\_\_\_\_\_  
Vanessa Bueras, CMC  
City Clerk

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Denis M. Fitzgibbons, City Attorney

**EXHIBIT A**

**REQUEST FOR STATEMENT OF QUALIFICATIONS**

**EXHIBIT B**

**DESIGN CONSULTANTS RESPONSE  
AND  
SCOPE AND FEE PROPOSAL**