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

Project Name: **Elliot District Park (Big League Dreams) Safety Repairs**
CIP No: **PR020 (Repairs)**
Contract No: **2014-7102-0248**
Date: _____

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

THIS CONTRACT is made this _____ day of _____, 20__, by and between the Town of Gilbert, a municipal corporation ("GILBERT") and _____ ("CM@R").

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

1.0 CM@R - FIDUCIARY DUTY

1.1 This is a contract for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CM@R has participated in the design process and been an active member of the Project Team and is fully aware of the issues and constraints involved in this construction project.

1.2 CM@R is GILBERT's fiduciary responsible for undertaking all necessary action contemplated under the contract documents to construct the Project and ensure timely and quality completion of the project at a cost within the Guaranteed Maximum Price (GMP).

1.3 This project is an "open book" project. GILBERT is entitled to attend any and all meetings, and GILBERT shall have access to any and all records of CM@R or maintained by CM@R relating to the Project.

2.0 CONSTRUCTION SERVICES

2.1 The definitions set forth in the Construction Manager at Risk Pre-Construction Services Contract dated _____ shall apply in addition to definitions set forth in the General Conditions and Supplementary Conditions for construction services.

2.2 CM@R shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the _____ Project and is generally described as follows: Complete construction of the _____ in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.

2.3 CM@R shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

3.0 TOWN OF GILBERT PROJECT MANAGER

GILBERT has appointed a Project Manager/Construction Manager (PM/CM) to manage this Project and to represent GILBERT on the Project site. GILBERT's PM/CM will assume all

duties and responsibilities and will have all rights and authority assigned to GILBERT PM/CM in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

GILBERT'S PM/CM for this Project is _____.

4.0 CONTRACT TIME

4.1 CM@R shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages and Construction Phases of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.

4.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Completion and readiness for final payments as stated in the Contract Documents, are of the essence of the Contract.

4.3 The Work shall be substantially complete within _____ working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within _____ working days after the date when the Contract Times commences to run. The Work may be divided into separate Construction Phases and the Contract Time for a Construction Phase will be set forth in the Construction Phase Notice to Proceed.

4.4 Failure of CM@R to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CM@R applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

4.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CM@R's duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

4.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CM@R to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

5.0 LIQUIDATED AND SPECIAL DAMAGES

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

5.1.1 GILBERT and CM@R recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 5.2, if the Work and/or portions of the Work are not performed and completed within the times specified in Section 4, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CM@R also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CM@R agree that as liquidated damages for delay (but not as a penalty) CM@R shall pay GILBERT _____ dollars and no cents ($_____) [or liquidated damages per MAG Section 108.9] for each working day that expires after the time specified in Section 4 for substantial completion, until the Work is substantially complete. After Substantial Completion, if CM@R shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CM@R shall pay GILBERT _____ dollars and no cents ($_____) [or liquidated damages per MAG Section 108.9] for each working day that expires after the time specified in Section 5 for final completion and readiness for final payment.

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

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

6.0 CONTRACT PRICE

GILBERT shall pay CM@R for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of _____ dollars and no cents ($_____) as more specifically set forth in Exhibit B – Guaranteed Maximum Price (GMP) Proposal of the CM@R Pre-construction Services Contract (including Cost Model Form CIP4.4) and incorporated herein by reference. If the Work is to be performed in Construction Phases, the Contract Price for each Construction Phase will be set forth in the Construction Phase Notice to Proceed.

7.0 CM@R REPRESENTATIONS

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

7.1 CM@R was a member of the Project Team for this Project and participated in and provided recommendations concerning the Contract Documents and Project Design.

7.2 CM@R has examined and carefully studied the Contract Documents (including any Addenda) and other related data, including "technical data" and all federal, state and local laws, ordinances, standards, rules and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.3 CM@R has obtained and carefully studied (or assumes responsibility for having done so) the reports of investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) and the drawings of physical conditions in or relating to existing surface or subsurface structures, at or contiguous to the site or otherwise which may affect costs, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CM@R and safety precautions and programs incident thereto. CM@R acknowledges that such reports and drawings are not Contract Documents and may not be complete for CM@R's purposes. CM@R acknowledges that GILBERT and GILBERT's PM/CM do not assume responsibility for the accuracy or completeness of information and data shown or indicated therein within respect to Underground Facilities at or contiguous to the site. CM@R acknowledges full responsibility for locating and resolving any conflicts with any Underground Facilities.

7.4 CM@R has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.5 CM@R has made or caused to be made examinations, investigations, tests, studies and related data as he deems necessary, and CM@R does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.6 CM@R has correlated the information known to CM@R, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, reports, and data, with the terms and conditions of the Contract Documents.

7.7 CM@R has given GILBERT's PM/CM written notice of all conflicts, errors, or discrepancies that CM@R has discovered in the Contract Documents, and the written resolution thereof by GILBERT is acceptable to CM@R, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CM@R assumes full responsibility and liability for any conflicts, errors or discrepancies in the

Contract Documents, including, but not limited to, the specifications, design and engineering for the project, for which written notice has not been provided and which a reasonable CM@R, participating in the design process as the Construction Manager at Risk would have discovered.

8.0 CONTRACT DOCUMENTS

The following documents are pertinent to the Project. (Place N/A in the blanks which are not applicable to this Contract):

8.1 The Contract (pages _____ to _____, inclusive).

8.2 Addenda consisting of Numbers _____ to _____ inclusive.

8.3 The project Specifications dated _____ entitled _____ Project.

8.4 The project Drawings comprised of a set entitled _____ and dated _____.

8.5 Performance Bond (page ___) and Payment Bond (page ___).

8.6 The approved CPM Construction Schedule dated _____.

8.7 The project General Conditions (pages _____ to _____, inclusive).

8.8 The project Supplementary Conditions (pages _____ to _____, inclusive.

8.9 Notice to Proceed dated _____.

8.10 CM@R's Guaranteed Maximum Price (GMP) dated _____ (pages _____ to _____) inclusive.

8.11 CM@R's List of Subcontractors (pages _____ to _____) inclusive.

8.12 CM@R's Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page _____).

8.13 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)
D. Construction Phase Authorization(s)

9.0 MISCELLANEOUS

9.1 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

9.2 GILBERT and CM@R each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in these Contract Documents.

9.3 Immigration Law Compliance Warranty:

9.3.1 As required by A.R.S. § 41-4401, CM@R hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CM@R further warrants that after hiring an employee, CM@R verifies the employment eligibility of the employee through the E-Verify program.

9.3.2 If CM@R uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

9.3.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. CM@R is subject to a penalty of $100 per day for the first violation, $500 per day for the second violation, and $1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. CM@R shall not be deemed in material breach of this Contract if the CM@R and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

9.3.4 Gilbert retains the legal right to inspect the papers of any CM@R or subcontractor employee who works on the Contract to ensure that the CM@R or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

9.3.5 If state law is amended, the parties may modify this paragraph consistent with state law.

9.4 Equal Treatment of Workers: CM@R shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Work. CM@R shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). CM@R shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by CM@R or its employees.

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

TOWN OF GILBERT

By: _____
Name, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____

CONSTRUCTION MANAGER AT RISK

_____

By: _____

Title: _____