

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

**Project:** Lindsay Road/SR 202 Traffic Interchange:  
CM@R Utility Relocation  
**CIP No.:** ST158  
**Contract No.:** 2018-2106-0214  
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**PRE-CONSTRUCTION SERVICES CONTRACT  
FOR CONSTRUCTION MANAGER AT RISK (CM@R) PROJECT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Town of Gilbert, an Arizona municipal corporation, hereinafter designated “GILBERT” and \_\_\_\_\_ hereinafter designated the “CONSTRUCTION MANAGER AT RISK” or “CM@R”.

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

**1.0 TERMS AND DEFINITIONS**

- 1.1 Addenda: Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.
- 1.2 Alternate Systems Evaluations: Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project. These alternatives shall be tracked using a Cost Estimate Development Log as described in Section 1.12.
- 1.3 Change Order: A document signed by CM@R and GILBERT that authorizes an addition, deletion or revision in the Work or Deliverables, or an adjustment in the Contract Amount or the period of services, issued on or after the Effective Date of this Agreement.
- 1.4 Contract: This written document signed by GILBERT and CM@R covering the pre-construction phase of the Project, and including the Contract Documents referenced in or attached to this Agreement.
- 1.5 Construction Documents: A set of Drawings and Specifications, as defined, upon which cost estimates and GMP Proposal(s) are to be based and the General Conditions.
- 1.6 Construction Fee: The CM@R’s profit.
- 1.7 Allowances Costs: Means those items included in the GMP as allowances, as more fully described on Exhibits B and C attached hereto and incorporated herein by reference.

Construction Phase: A portion of the Project defined by a specific scope of the Work and Contract Time that is less than the entire Project. A Construction Phase shall be separately authorized by a Notice to Proceed and shall include a GMP for that Construction Phase. Each Construction Phase shall be governed by the Contract Documents.

- 1.8 Contract Documents: This Agreement, CM@R final approved GMP Proposal (including documentation accompanying the GMP Proposal and any post GMP Proposal documentation submitted prior to the final approval of the GMP Proposal), the Notice to Proceed for pre-construction services, the General Conditions for Construction Phase, the Specifications and

the Drawings produced by the Engineer, all Written Amendments and Change Orders to this Contract, the geotechnical report, and any other documents so designated in this Agreement.

- 1.9 Contract Amount: The final approved Contract Amount for this Contract as identified in paragraph 4.1.
- 1.10 Contract Time(s): The number of Working Days or the dates related to the construction of the Project or a Construction Phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.
- 1.11 Cost Estimate: The labor, materials, and equipment costs developed by the CM@R, and updated during each of the design phases, to support the "Cost of the Work" values used to develop the Guaranteed Maximum Price (GMP) for the Cost Model described in Exhibit B.
- 1.12 Cost Estimate Development Log: This document shall be developed by the CM@R during the design phases of the Project and lists design modifications in a tabular form that, if accepted, will result in additive and deductive changes to the Cost Estimate (See Exhibit E). The initial list includes design modifications for consideration that the CM@R, from past experience with similar projects, presents for consideration by the Project Team.
- 1.13 Cost of the Work: The sum of all allowable direct costs during construction, including Specification Divisions 1-16, Allowances, and Contractor Contingency, that would be, or actually were necessarily incurred by the CM@R, directly or through Sub-consultants, Subcontractors, and/or Suppliers in properly furnishing and performing the Work required by the Contract Documents. (See Exhibits B and C)
- 1.14 Cost Model: The cost model is identified in Exhibit B and on Cost Model Form CIP4.4. The cost model provides a formula for developing the Total Project Cost. The Total Project Cost is the sum of the Cost of the Work (Direct Costs), Indirect Cost, and Preconstruction Services.
- 1.15 Day: Calendar Day unless otherwise specified.
- 1.16 Deliverables: The work products prepared by the CM@R in performing the Work. Some of the major deliverables to be prepared and provided by the CM@R during the pre-construction phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Sub-Bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.
- 1.17 Drawings: The one hundred percent construction submittal, which visually represent the scope, extent and character of the Work to be furnished and performed by CM@R during construction. Drawings have been prepared or approved by the Engineer, approved by GILBERT and are referred to and are included in the Contract Documents. The term includes Drawings that have reached a sufficient stage of completion and released by the Engineer

solely for the purpose of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g., conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 95% or 100%), but “not for construction”. Shop drawings are not Drawings as so defined.

- 1.18 Engineer: The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth therein (A/E).
- 1.19 Final Completion: Final Completion is defined as the date when, in the opinion of GILBERT and the PM/CM, all substantial completion inspection punch-list items have been addressed and the work is complete in accordance with the contract documents. When a Project includes Construction Phases, Final Completion may be given for a Construction Phase.
- 1.20 Force Majeure: Force Majeure means, fire, unavoidable casualty, flood (assuming CM@R has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the CM@R and Subcontractors), or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the CM@R. A labor shortage or material shortage is not Force Majeure.
- 1.21 General Conditions Costs: Means those costs identified in Exhibit C.
- 1.22 Guaranteed Maximum Price (GMP) Proposal: The maximum compensation payable to the CM@R in performance of the work for the project or a Construction Phase as specified in the contract documents or subsequently adjusted by modification to the contract through a GMP Change Order. The GMP Proposal(s) are to be delivered pursuant to Article 2 of this Contract and are described in Exhibits B and C.
- 1.23 Horizontal Construction: Means highways, roads, streets, bridges, canals, floodways, earthen dams, and landfills (A.R.S. Section 34-101.16).
- 1.24 Laws and Regulations; Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.25 Notice of Award: The written notice by GILBERT to the CM@R stating that upon compliance by the CM@R with the conditions precedent enumerated therein, within the time specified, GILBERT will sign and deliver this Contract.
- 1.26 Notice to Proceed: A written notice given by GILBERT to CM@R fixing the date on which the CM@R will start to perform CM@R's obligations under this Contract or a Construction Phase.
- 1.27 Progress Payment Application: The form that is accepted by GILBERT and used by CM@R is requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and/or GILBERT.

- 1.28 Project: The total design and construction, including pre-construction services and construction services to be provided may be the whole, or a part.
- 1.29 Project Team: Pre-construction services team consisting of GILBERT, PM/CM, A/E, CM@R, and other stakeholders who are responsible for making decisions regarding the Project.
- 1.30 Record Drawings: Drawings (plans) prepared after construction is complete that represent the work accomplished under the contract.
- 1.31 Samples: Physical examples of materials, equipment, or workmanship representative of a part of the construction Work and which establish the standards by which the portion of the construction Work will be evaluated.
- 1.32 Shop Drawings: All Drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@R and submitted by the CM@R to illustrate some portion of the Work.
- 1.33 Specifications: The part(s) of the Contract Documents used during construction services consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.34 Subcontractor: An individual, firm or corporation having a direct contract with the CM@R or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction services Work at the site for which the CM@R is responsible for. Subcontractors will be selected through the Sub-Bid process described in paragraph 2.7 of this Contract.
- 1.35 Substantial Completion: The construction services for the Work (or a specified part thereof) has progressed to the point where, in the opinion of the PM/CM, as evidenced by a Certificate of Substantial Completion, such construction services are sufficiently complete in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; without any outstanding concurrent Work at the site, except as may be required to complete or correct Punch List items. If no such certificate is issued, Substantial Completion takes place when the construction services Work or a Construction Phase is complete and ready for final payment as evidenced by the PM/CM's written recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the construction Work refers to Substantial Completion thereof.
- 1.36 Supplier: A manufacturer, fabricator, supplier, distributor, material-man or vender having a direct contract with CM@R or any Subcontractor.
- 1.37 Total Float: Number of Working Days by which the pre-construction services or construction services Work or any part of the same may be delayed without extending a pertinent schedule milestone in the Project Schedule.

- 1.38 Town of Gilbert Project Manager: The person, firm or corporation designated by GILBERT to administer this Contract on behalf of GILBERT (PM/CM).
- 1.39 Town of Gilbert Project Representative: Any person, designated by GILBERT to oversee the Project in its entirety, inclusive of Capital Projects Administrator, GILBERT's Program Manager, GILBERT Engineers, etc.
- 1.40 Work: The pre-construction services described in this Contract and the entire completed construction services or the various separate Construction Phases thereof, required to be furnished pursuant to the Construction Services Contract. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents.
- 1.41 Working Days: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays.
- 1.42 Written Amendment: A written modification to the Contract Documents, signed by GILBERT and the CM@R on or after the Effective Date of this Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## **2.0 PRE-CONSTRUCTION SCOPE OF SERVICES**

For the fee set forth in Section 4, CM@R to furnish professional pre-construction services during the design of the Project described in Appendix D. The CM@R accepts a relationship of trust and confidence between itself and GILBERT and undertakes to act as GILBERT's fiduciary in all matters related to the Project. The CM@R acknowledges that it has the expertise to complete the Work identified in this Contract and agrees to furnish its best skills and best judgment to cooperate with GILBERT and provide support to the Engineer during the design of the Project, and in all ways to further the interests of GILBERT and the Project. The CM@R shall furnish cost effective recommendations to maintain Project budgets, efficient constructability reviews, business administration, field supervision and shall use its best efforts to see to it that the work of the Project is done in the best and most expeditious, economical manner consistent with the interests of GILBERT, and in strict conformity with the Contract Documents, including all reasonable implications therein. Because of the CM@R's fiduciary duties to GILBERT, the Project will be an "open book" job whereby GILBERT may attend any and all meetings of the CM@R firm relating to the Project, and GILBERT or its designated auditors or accountants shall have access to any and all records of the CM@R or maintained by the CM@R relating to the Project.

## **2.1 GENERAL**

- 2.1.1 A/E and PM/CM: GILBERT has contracted separately with an Engineer to provide engineering services for the Project. GILBERT has either designated a GILBERT staff member to act as GILBERT's PM/CM or has contracted separately with a person, firm or corporation to act as GILBERT's PM/CM. The PM/CM has no design responsibilities of any



nature. None of the activities of the PM/CM supplant or conflict with the design, budget, or any other services and responsibilities furnished by CM@R or subconsultants. All instructions by GILBERT relating to this Contract will be issued or made through the PM/CM. All communications and submittals of CM@R to GILBERT shall be issued or made through the PM/CM unless GILBERT or the PM/CM shall otherwise direct. The PM/CM shall not reasonably withhold approval for the CM@R to communicate directly with GILBERT or the A/E. The PM/CM shall have the authority to establish procedures, consistent with this Contract, to be followed by the CM@R and to call periodic conferences to be attended by the CM@R and the CM@R's subconsultants, throughout the term of this Contract.

- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@R will provide to GILBERT, within 20 Working Days of the Notice to Proceed, a written evaluation of the Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Management/Project Team/Progress Meetings: These meetings will present general Project progress, address design options that arise during the design process, and receive input and direction from GILBERT engineering and operational staff. Project management meetings shall be conducted weekly or as required. Team meetings shall be conducted throughout the design portion of the project, to complement the project schedule and design review meetings. The CM@R will participate in each meeting, report on the project construction schedule and cost estimate, and provide pertinent input when required.
- 2.1.4 The CM@R will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@R will promptly notify GILBERT in writing whenever the CM@R determines that any Drawings or Specifications are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Project Schedule, GMP and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@R, when requested by GILBERT or at its own initiative, if authorized by GILBERT, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The CM@R will assist the A/E and PM/CM in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings. This contract will require \_\_\_\_ (\_\_) such public meetings.

## **2.2 CONSTRUCTION MANAGEMENT PLAN (CMP)**

- 2.2.1 Prior to the start of construction the CM@R will prepare, and submit to GILBERT, a Construction Management Plan (CMP), which will detail but not necessarily be limited to the CM@R's determinations concerning: (1) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (2) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (3) alternate strategies for fast-tracking and/or phasing the construction, (4) separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials, (5) the number of

separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (6) permitting strategy, (7) safety and training programs, (8) construction quality control, (9) the Cost Model and basis of the model, (10) a matrix summarizing each Project Team member's responsibilities and roles and (11) construction security.

- 2.2.2 The CM@R will add detail to its previous version of the CMP to keep it current throughout the pre-construction services phase, so that the GMP is ready for implementation at the start of construction of the Project or any Construction Phase. The update/revisions will take into account (a) revisions in Drawings and Specifications; (b) the CM@R's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by GILBERT, PM/CM, A/E or the CM@R, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment and/or materials and (g) funding issues identified by GILBERT.
- 2.2.3 The CM@R will prepare a written report on the market conditions that may affect the budget or the schedule and provide the report to the PM/CM.
- 2.2.4 Cost Estimate Development Log: This document shall be developed by the CM@R at the beginning of the project and will initially include additive and deductive cost item suggestions that the CM@R has found from past experience on similar projects to be appropriate for consideration by the project team. The CM@R shall update this log on a regular basis during the design process and all additive/deductive items shall be approved by the PM/CM with input from the A/E.

## **2.3 PROJECT SCHEDULE**

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@R will develop a Project schedule and will assist the PM/CM in updating and maintaining the Project Schedule on behalf of and to be used by the Project Team based on input from other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by GILBERT. The CM@R will use Primavera compatible scheduling software to assist the PM/CM to establish, update, and maintain the Project Schedule. The Project Schedule will be presented in graphical and tabular reports as agreed upon by the Project Team. The Project Schedule will include all tasks and deliverables required by each member of the Project Team to identify long lead items such as Right of Way transactions, Utility Relocation Activity, Permitting Requirements, Railroad coordination, etc. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The Project Schedule's activities will directly correlate

with the Schedule of Values specified in paragraph 2.5. The Construction Schedule developed during the preconstruction phase shall be resource loaded for manpower and cash flow during the construction of the project.

- 2.3.2 The CM@R will include and integrate in the Project Schedule the services and activities required of the PM/CM, A/E and CM@R, including all pre-construction and construction services. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, preliminary design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by GILBERT. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various Construction Phases, total float for all activities, relationships between the activities, GILBERT's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.
- 2.3.3 The Project Schedule will be updated and maintained by the PM/CM with assistance from the Project Team throughout the pre-construction services phase such that it will not require major changes at the start of construction services or any Construction Phase to incorporate CM@R's plan for the performance of the construction services Work. The PM/CM will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than monthly. The PM/CM will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. The Project Schedule update will be submitted to the PM/CM by the 3rd Friday of each month to be reviewed and submitted to GILBERT's Representative.
- 2.3.4 Project Phasing: If phased construction is deemed appropriate and GILBERT approves, the CM@R will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, including any Construction Phase, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@R will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and other factors pertinent to saving time and cost.
- 2.3.5 Long-Lead Time Item Procurement: The CM@R will provide the PM/CM with a written list of long-lead items, if any, that must be procured during the pre-construction phase to meet the Project Schedule requirements and recommend a schedule for their procurement.
- 2.3.5.1 GILBERT may procure such long-lead items on terms and conditions acceptable to the CM@R to the extent GILBERT determines that it is their own best interest to do so under purchase orders executed by GILBERT. Upon GILBERT's

acceptance of any CM@R GMP Proposals, which includes such long-lead time items, the applicable purchase orders will be assigned by GILBERT to the CM@R, who will accept responsibility for such items as if they were initially procured by the CM@R. The CM@R will be entitled to receive the construction fee associated with the pre-purchased equipment value as compensation for accepting this responsibility.

- 2.3.5.2 If GILBERT concludes alternately, that it is in its own best interest to have the CM@R procure such long-lead time items, GILBERT may, at its sole discretion, direct the CM@R to solicit bids, and upon approval by GILBERT of the terms and conditions of their purchase, GILBERT will authorize in writing the CM@R to issue purchase orders for those items. Only upon approval of GMP Proposals, or upon a separate executed procurement agreement, will GILBERT authorize the CM@R to actually expend Project funds for such long-lead items.
- 2.3.5.3 If GILBERT chooses not to procure long-lead time items prior to acceptance of a GMP Proposal, the CM@R will list the items and a delivery schedule in the Sub-Bid Documents. The CM@R will notify the potential Suppliers, Subcontractors, and fabricators of the required delivery schedule so that it will be taken into consideration, if necessary in their bid.

## **2.4 DESIGN DOCUMENT REVIEWS**

- 2.4.1 The CM@R will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact GMP Proposals and/or the Project Schedule and provide this information in a written report to the PM/CM.
- 2.4.2 The CM@R will identify, in writing and in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CM@R to construct the Project. After completion of pre-construction services, the CM@R may provide additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The CM@R will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.
- 2.4.3 The CM@R will meet with the Project Team as required to review designs during their development. The CM@R will thoroughly familiarize itself with the evolving documents through schematic design (30%), design development (60%), construction documents (95%), and final documents (100%). The CM@R will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@R will also advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@R will recommend cost effective alternatives.
- 2.4.4 The CM@R will conduct constructability and bidability reviews of the Drawings and Specifications at the 30%, 60%, and 95% document submittals. The reviews will attempt to

identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

2.4.4.1 Constructability Reviews: The CM@R will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, lay-down and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

2.4.4.2 Bidability Reviews: The CM@R will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

2.4.4.3 The results of the reviews will be provided to GILBERT, in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by GILBERT, the CM@R will meet with the PM/CM and A/E to discuss any findings and review reports.

2.4.4.4 The CM@R'S reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during construction, responsibility for the Drawings and Specifications will remain with the Engineer and not the CM@R.

2.4.5 Notification of Variance of Deficiency: It is the CM@R's responsibility to assist the A/E in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations as they relate to the performance of the Work. If the CM@R recognizes that portions of the Construction Documents as they relate to the performance of the Work are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the A/E, PM/CM and GILBERT in writing, describing the apparent variance or deficiency.

2.4.6 Alternate Systems Evaluations: The Project Team, at all regularly scheduled Design Review Meetings will routinely identify and evaluate, using value engineering principles, any alternate systems, approaches, design changes that have the potential to reduce Project costs while still

delivering a quality and functional product. If the Project Team agrees, the CM@R in cooperation with the PM/CM and A/E will perform a cost-benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Engineer will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@R will include the cost of the alternatives into the Cost Model and any GMP Proposals.

## **2.5 COST MODEL, COST ESTIMATES AND SCHEDULE OF VALUES**

- 2.5.1 As soon as practical during the schematic design phase, the CM@R will review all available information regarding the design and scope of the Project and, based upon that review, will develop a schematic design Cost Estimate that will serve as input to the Cost Model identified in Exhibit B. The Cost Estimate will be continually updated and kept current as the design phases progress until a final GMP for the entire Project is established. The Cost Estimate will be the best representation by the CM@R of what the complete functional Project's construction costs will be. The CM@R will communicate to the Project Team, any assumptions made in preparing the Cost Estimate. The Cost Model will include (a) the Cost of the Work (Cost Estimate, allowances and contingencies), (b) Indirect Costs, and (c) Preconstruction Services. The sum of (a) and (b) defines the GMP and the sum of (a) through (c) gives the Total Project Cost.
- 2.5.2 During the design phases the CM@R shall maintain a Cost Estimate Development Log (see Exhibit E) in which he tracks the additive and/or deductive changes to the Cost Estimate based on the CM@R's review of design documents made available at the specified design phase. The PM/CM, A/E and CM@R will reconcile any disagreements on the estimate to arrive at an agreed upon Cost Estimate for the construction costs based on the scope of the Project through that specified design phase. The design phases applicable to this paragraph are: schematic design completion, design development completion, construction documents completion, and final completion at 30%, 60%, 95% and 100%. If the Project Team requires additional updates of the Cost Estimate beyond that specified in this paragraph, the CM@R will provide the requested information in a timely manner.
- 2.5.3 If at any point the Cost Estimate submitted to GILBERT exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or GILBERT's Project Budget, the CM@R will make appropriate recommendations to the PM/CM and A/E on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the project's basic program) such that it is equal to or less than the established Project Team's target and/or the Project Budget. These changes to the Cost Estimate shall be identified in the Cost Estimate Development Log.
- 2.5.4 Before the first Application for Payment, the CM@R shall submit to GILBERT, and the parties shall agree upon, a schedule of values, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion. This schedule of values shall be used as a basis for payment.
- 2.5.5 The CM@R will prepare a monthly cash flow projection for the Project. This projection shall be updated on a monthly basis to reflect payments to the CM@R for completed work.

## **2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

- 2.6.1 GILBERT's construction budget for this Project is \_\_\_\_\_. During the formulation of the Project and execution of the design the CM@R shall maintain cost controls to deliver the Project GMP within the Project budget. If at any time during the design of the Project it appears that the cost of construction may exceed the Project construction budget the CM@R shall immediately notify GILBERT. Project budgets will be developed for each Construction Phase. If the GMP provided by the CM@R at any point exceeds the Project budget, the CM@R shall recommend approaches to bring the Project within budget.
- 2.6.2 The Indirect Cost percentages associated with General Conditions, Bond allowance, Sales Taxes, Insurance allowance, and Contractor's Fee; of the Guaranteed Maximum Price (GMP) Cost Model given in Exhibit B shall be negotiated prior to the execution of the Contract and shall be used in subsequent GMP Proposal development. These percentages are to be applied to the "Cost of the Work" estimates for both additive and deductive change orders.
- 2.6.3 At the stage of design as approved by GILBERT and PM/CM, the CM@R shall, if requested by GILBERT, propose a GMP, which shall be the sum of the estimated Cost of the Work and the Indirect Costs as defined in the "Guaranteed Maximum Price (GMP) Cost Model" given in Exhibit B.
- 2.6.4 The preconstruction services shall be negotiated separately and shall include all costs, including indirect costs and fee, associated with that phase of the work.
- 2.6.5 The Total Project Cost is the sum of the GMP Proposal, Preconstruction Services, and prior phase GMPs as defined in the Guaranteed Maximum Price Cost Model given in Exhibit B.
- 2.6.6 The CM@R shall include with the GMP Proposal a written statement of its basis, which shall include:
- 2.6.6.1 A list of the Design Materials and Construction Documents, including all addenda, which were used in preparation of the GMP Proposal.
  - 2.6.6.2 A list of allowances and a statement of their basis.
  - 2.6.6.3 A list of the assumptions and clarifications made by the CM@R in the preparation of the GMP Proposal to supplement the information contained in the Design Materials and Construction Documents.
  - 2.6.6.4 The date of Substantial Completion upon which the GMP Proposal is based and the Schedule of Work upon which the date of Substantial Completion is based.
  - 2.6.6.5 A schedule of applicable alternate prices.
  - 2.6.6.6 A schedule of applicable unit prices.
  - 2.6.6.7 A statement of Additional Services included, if any.
  - 2.6.6.8 The time limit for acceptance of the GMP Proposal.

- 2.6.6.9 A list of the proposed personnel or positions that the CM@R intends to station at the jobsite to manage the work.
- 2.6.7 The CM@R shall meet with GILBERT and the PM/CM to review the GMP Proposal. In the event that GILBERT and PM/CM discover any inconsistencies or inaccuracies in the information presented, GILBERT and PM/CM shall promptly give written notice to the CM@R, who shall make appropriate adjustments to the GMP Proposal, its basis or both.
- 2.6.8 Prior to GILBERT'S acceptance of the Contractor's GMP Proposal, the CM@R shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as GILBERT and PM/CM may specifically authorize in writing.
- 2.6.9 The CM@R, in preparing any GMP Proposal, will obtain from the A/E three sets of signed, sealed, and dated Construction Documents (including all addenda). The CM@R will prepare its GMP in accordance with GILBERT's "Request for GMP Proposal" requirements based on the most current completed Construction Documents at that time. The CM@R will mark the face of each document of each set upon which its proposed GMP is based. The CM@R will send one set of those documents to the PM/CM, keep one set and return the third set to the A/E.
- 2.6.10 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.11 In the event the CM@R elects, in its sole discretion, to maintain a Contractor Contingency within the GMP, the Contractor Contingency must be acceptable to GILBERT. In addition, the terms and conditions regarding use of the contingency during construction services will be established by GILBERT and reflected in the Construction Phase Notice to Proceed for that phase of the Project. The use of the Contractor Contingency will be based on these mutually agreeable terms and conditions and written approval from the Owner shall be a prerequisite to the CM@R's use of the Contractor Contingency. CM@R will establish and maintain a Contractor Contingency Log and shall review the status of the Contractor Contingency with the PM/CM at each weekly meeting.
- 2.6.12 GMP Proposal(s) Review and Approval
- 2.6.12.1 The CM@R will meet with the PM/CM and A/E to review any GMP Proposal(s) and the written statement of its basis. In the event the PM/CM or A/E discovers inconsistencies or inaccuracies in the information presented, the CM@R will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.12.2 Upon receipt of any GMP Proposal from the CM@R, GILBERT may submit the same documents that were used by CM@R in developing his GMP to an independent third party or to the A/E for review and verification. The third party or A/E will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.6.12.3 If the CM@R'S GMP Proposal is greater than the independent third party or A/E's estimate, GILBERT may require the CM@R to reconfirm its GMP Proposal. The



CM@R will accept the independent third party's or A/E's estimate for the Cost of the Work as part of his GMP or present a report within seven days of a written request to GILBERT identifying, explaining and substantiating the differences. The CM@R may be requested or at its own discretion submit a revised GMP Proposal for consideration by GILBERT. At that time GILBERT may do one of the following:

- A. Accept the CM@R'S original or revised GMP Proposal, if within GILBERT's budget, without comment.
- B. Accept the CM@R'S original or revised GMP Proposal that exceeds GILBERT's budget, and indicate in writing to the CM@R that the Project Budget has been increased to fund the differences.
- C. Reject the CM@R'S original or revised GMP Proposal because it exceeds either or both GILBERT's budget and the independent third party's or A/E's estimate, in which event, GILBERT may terminate this Contract and/or elect to not enter into a separate contract with the CM@R for construction associated with the scope of Work reflected in the GMP Proposal.

2.6.12.4 If during the review and negotiation of GMP Proposals design changes are required, GILBERT will authorize and cause the A/E to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@R. The CM@R will promptly notify the A/E and PM/CM if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

## **2.7 COMPETITIVE BIDDING AND SUB-BIDS**

- 2.7.1 The CM@R will develop a written Subcontractor Selection Plan for approval by GILBERT that includes the names of a minimum of three qualified Subcontractors for each trade in the Project and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the CM@R will request approval by the PM/CM to submit less than three names. No change in the approved Subcontractors will be allowed without prior written approval by GILBERT.
- 2.7.2 If prior to receipt of Sub-Bids or prior to award of Subcontractors or Suppliers, GILBERT objects to any nominated Subcontractor or Supplier or to any self-performed Work for good reason, the CM@R will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Sub-Bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by GILBERT, the CM@R proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.3 The CM@R will distribute Drawings and Specifications and conduct a pre-bid conference with prospective Subcontractors.
- 2.7.4 If the Work is defined as Horizontal Construction the CM@R shall self-perform at least 45% of

the construction Work.

- 2.7.5 The CM@R, at the required time, will close the bidding and collect all Sub-Bids received within the prescribed deadline for receipt of Sub-Bids. Promptly, after the closing of Sub-bids, the CM@R will (in the presence of the PM/CM) open and read all properly and timely submitted Sub-Bids. The CM@R will submit a completed Sub-Bid tabulation form to the PM/CM within a reasonable time after the closing of the Sub-Bid opening proceedings.
- 2.7.6 The CM@R, upon opening of Sub-Bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective Suppliers selected by each apparent low Sub-Bidder. The CM@R will resolve any Sub-Bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.7.7 If the CM@R elects to utilize a subcontractor whose bid was not lowest the CM@R shall request written approval from GILBERT for use of the subcontractor and shall state the reason(s) for not using the lowest bidder.
- 2.7.8 Within fifteen (15) Days after Sub-Bid opening, the CM@R will deliver to the PM/CM a written Notice of Intent to Award, itemizing the Subcontractors and Suppliers selected by the CM@R. The Notice of Intent to Award will detail (a) for each Sub-agreement the amount of the Sub-Bid and the corresponding Subcontractor or Supplier, (b) the sum of Sub-Bids received for all intended Sub-agreements, (c) trade work that the CM@R intends to self-perform, if any.
- 2.7.9 Early selection of subcontractors or suppliers based on qualifications and/or price will be performed in accordance with applicable State procurement laws. If the CM@R believes early selection of subcontractors is in the best interest of the Project he will notify the PM/CM in writing outlining which subcontractors and/or suppliers should be considered on this basis. This procedure shall be in accordance with the Subcontractor Selection Plan. The PM/CM will review this request and respond in writing within fourteen (14) days.

### **3.0 PERIOD OF SERVICES**

- 3.1 The pre-construction services described in Section 2 will be performed by CM@R in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@R to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by GILBERT.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for GILBERT, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal GILBERT holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. on the day of performance.

### **4.0 CONTRACT AMOUNT AND PAYMENTS**

#### **4.1 CONTRACT AMOUNT**

Based on the Preconstruction Services fee proposal submitted by the CM@R and accepted by GILBERT (which by reference is made a part of this Contract); GILBERT will pay the CM@R on a Time and Material basis as follows:

- 4.1.1 For the Basic Service described in Section 2, and performed to the satisfaction of GILBERT, the not-to-exceed amount: \_\_\_\_\_ dollars and no cents (\$\_\_\_\_\_).
- 4.1.2 For the Additional Services described in paragraph 4.3, and performed to the satisfaction of GILBERT, the not-to-exceed amount: \_\_\_\_\_ dollars and no cents (\$\_\_\_\_\_).

#### **4.2 PAYMENTS**

- 4.2.1 Requests for monthly payments by the CM@R for pre-construction services will be submitted to PM/CM and will be accompanied by a progress report, detailed invoices, and receipts. Any request for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, an updated cash flow report, plus similar narrative and listings of Deliverables associated with their Work. Services will be paid in accordance with the work effort expended on that service during the preceding month.
- 4.2.2 The Contract fees for CM@R and Subconsultants will be based upon the hourly rate schedule included as Exhibit A attached.
- 4.2.3 The CM@R will pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after the CM@R has received payment for those services from GILBERT.
- 4.2.4 The CM@R agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances such as utility companies and outside agencies which are beyond the reasonable control of GILBERT during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time (noncompensable) for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@R to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of GILBERT of any of its legal rights herein.
- 4.2.5 No compensation to the CM@R will be allowed contrary to Article 1, Chapter 1, Title 34 of the Arizona Revised Statutes.
- 4.2.6 If any service(s) executed by the CM@R is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@R, the CM@R is to be paid for the services performed prior to the abandonment or suspension.

### **4.3 ADDITIONAL SERVICES**

The following Additional Services may be required for the successful completion of this Project. Mark-ups are not authorized and only the items specifically identified below will be reimbursed as authorized herein:

- A. Potholing
- B. Surveying
- C. Other

[Modify Additional Services as required]

### **5.0 TOWN OF GILBERT'S RESPONSIBILITIES**

**5.1** GILBERT, at no cost to the CM@R, will furnish the following information:

5.1.1 One copy of data GILBERT determines pertinent to the Work. However, the CM@R will be responsible for searching the records and requesting information it deems reasonably required for the Project.

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

5.1.3 GILBERT's representative who will serve as PM/CM during the term of this Contract is \_\_\_\_\_. PM/CM has the authority to administer this Contract and will monitor CM@R's compliance with all terms and conditions stated herein. All requests for information from or decisions by GILBERT on any aspect of the work or Deliverables will be directed to PM/CM.

**5.2** GILBERT additionally will: [Add any additional GILBERT Responsibilities]

5.2.1 Contract separately with one or more firms to provide engineering design services for the Project. The scope of services for the A/E will be provided to the CM@R for its information. The CM@R will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to GILBERT and A/E.

5.2.2 Supply, without charge, one (1) copy of programs, reports, drawings, and specifications reasonably required by the CM@R.

5.2.3 Provide the CM@R with adequate information in its possession or control regarding GILBERT's requirements for the Project.

5.2.4 Give prompt written notice to the CM@R when GILBERT becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.

5.2.5 Notify the CM@R of changes affecting the budget allocations.

- 5.3** GILBERT'S Representative, will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information GILBERT's Representative deems appropriate to the CM@R.

## **6.0 CONTRACT CONDITIONS**

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

- 6.1.1 GILBERT Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of GILBERT and are to be delivered to the PM/CM before the final payment is made to the CM@R. Nonetheless, in the event these Project Documents are used, modified or adapted without the written consent of the CM@R, which consent the CM@R will not unreasonably withhold, GILBERT agrees to hold the CM@R harmless to the extent permitted by law, from the legal liability arising out of and or resulting from GILBERT's use, modification or adaptation of the Project Documents.
- 6.1.2 CM@R to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@R, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@R.
- 6.1.3 License to GILBERT for Reasonable Use: The CM@R hereby grants, and will require its Subconsultants to grant, a license to GILBERT, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require GILBERT to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@R and its Subconsultants will endorse by professional seal all plans, works, and Deliverables prepared by them for this Contract.

### **6.2 COMPLETENESS AND ACCURACY OF CM@R'S WORK**

The CM@R will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. The fact that GILBERT has accepted or approved the CM@R's work or Deliverables will in no way relieve the CM@R of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to GILBERT.

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

In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of service, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by GILBERT. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by GILBERT and the CM@R. Such Change Order or Amendment will not be effective until approved by GILBERT. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@R may accordingly be adjusted by mutual agreement of the contracting parties. No claim for extra work done or materials furnished by the CM@R will be allowed by GILBERT except as provided herein, nor will the CM@R do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@R without such prior written authorization will be the CM@R's sole jeopardy, cost, and expense, and the CM@R hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

## **6.4 DATA CONFIDENTIALITY**

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@R in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@R in connection with the CM@R's performance of this Contract is confidential and proprietary information belonging to GILBERT.
- 6.4.3 The CM@R will not divulge data to any third party without prior written consent of GILBERT. The CM@R will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CM@R has first given the required notice to GILBERT:
  - 6.4.3.1 Data which was known to the CM@R prior to its performance under this Contract unless such data was acquired in connection with work performed for GILBERT.
  - 6.4.3.2 Data which was acquired by the CM@R in its performance under this Contract and which was disclosed to the CM@R by a third party, who to the best of the CM@R's knowledge and belief, had the legal right to make such disclosure and the CM@R is not otherwise required to hold such data in confidence; or
  - 6.4.3.3 Data, which is required to be disclosed by the CM@R by virtue of law, regulation, or court.
- 6.4.4 In the event the CM@R is required or requested to disclose data to a third party, or any other information to which the CM@R became privy as a result of any other contract with GILBERT, the CM@R will first notify GILBERT as set forth in this Article of the request or demand for the data. The CM@R will timely give GILBERT sufficient facts, such that

GILBERT can have a meaningful opportunity to either first give its consent or take such action that GILBERT may deem appropriate to protect such data or other information from disclosure.

- 6.4.5 The CM@R, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by GILBERT, will promptly deliver, as set forth in this section, a copy of all data to GILBERT. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM@R assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate GILBERT if any of the provisions of this section are violated by the CM@R, its employees, agents or Subconsultants. For the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

## **6.5 PROJECT STAFFING**

- 6.5.1 Prior to start of any work or Deliverable under this Contract, the CM@R will submit to GILBERT, an organization chart for the CM@R staff and Subconsultants and detailed resumes of key personnel listed in its response to GILBERT's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, GILBERT hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@R desires to change such key personnel from performing such services under this Contract, the CM@R will submit the qualifications of the proposed substituted personnel to GILBERT for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 The CM@R will maintain an adequate number of competent and qualified persons, as determined by GILBERT, to ensure acceptable and timely completion of the scope of services described in Section 2 throughout the performance of this Contract. If GILBERT objects, with reasonable cause, to any of the CM@R's staff, the CM@R will take prompt corrective action acceptable to GILBERT and, if required, remove such personnel from the Project and replace with new personnel acceptable to GILBERT.

## **6.6 INDEPENDENT CONTRACTOR**

The CM@R is and will be an independent contractor and whatever measure of control GILBERT exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give GILBERT the right to direct the CM@R as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

## **6.7 SUBCONSULTANTS**

Prior to beginning the Work or Deliverable, the CM@R will furnish GILBERT for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of GILBERT.

## **6.8 TERMINATION**

- 6.8.1 GILBERT and the CM@R hereby agree to the full performance of the covenants contained herein, except that GILBERT reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@R.
- 6.8.2 In the event GILBERT abandons any or all of the services or any part of the services as herein provided, GILBERT will so notify the CM@R in writing, and the CM@R will immediately after receiving such notice discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.3 The CM@R, upon such termination or abandonment, will promptly deliver to GILBERT all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by GILBERT.
- 6.8.4 The CM@R will appraise the work completed and submit an appraisal to GILBERT for evaluation. GILBERT will have the right to inspect the CM@R's work or Deliverable to appraise the work completed.
- 6.8.5 The CM@R will receive compensation in full for services satisfactorily performed to the date of such termination. The fee will be paid in accordance with Paragraph 4 of this Contract, and will be an amount mutually agreed upon by the CM@R and GILBERT. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Paragraph 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". GILBERT will make the final payment within sixty days after the CM@R has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

## **6.9 DISPUTES**

- 6.9.1 In the event of any dispute arising between GILBERT and the CM@R regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.
- 6.9.2 Dispute Resolution Procedures: Initial Meeting to Resolve Disputes. Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at GILBERT's offices within three (3) Working Days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by GILBERT's Authorized Representative, the CM@R's Authorized Representative and any other person who may be



affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

### 6.9.3 Mediation:

6.9.3.1 If the dispute has not been resolved within five (5) Working Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) Working Days after his/her appointment, which meeting shall be attended by GILBERT's Authorized Representative, the CM@R's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

6.9.3.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) Working Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

## 6.10 WITHHOLDING PAYMENT

GILBERT reserves the right to withhold funds from the CM@R's progress payments up to the amount equal to the claims GILBERT may have against the CM@R, until such time that a settlement on those claims has been reached.

## 6.11 RECORDS/AUDIT

6.11.1 Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between GILBERT and the CM@R will be kept on a generally recognized accounting basis. GILBERT, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. GILBERT reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data.

6.11.2 The CM@R will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure GILBERT, its authorized representative, and/or the appropriate federal agency, has access to

the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. GILBERT reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier Contracts, and one or more of those parties do not allow GILBERT to audit their records to verify the accuracy and appropriateness of pricing data.

## **6.12 INDEMNIFICATION**

- 6.12.1 To the fullest extent permitted by law, CM@R, its successors and assigns shall indemnify and hold harmless GILBERT, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CM@R or other persons employed or used by the CM@R in the performance of this Agreement. CM@R's duty to indemnify and hold harmless GILBERT, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by CM@R's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person employed by CM@R or used by CM@R in the performance of this Agreement.
- 6.12.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## **6.13 NOTICES**

Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class US mail, registered or certified, postage prepaid and properly addressed as follows:

### **TO GILBERT:**

Name  
Town Manager  
Town of Gilbert  
50 East Civic Center Drive  
Gilbert, AZ 85296

### **TO CM@R:**

Representative Name  
Representative Title  
Company Name  
Company Address  
Company Address

## **6.14 COMPLIANCE WITH FEDERAL LAWS**

- 6.14.1 The CM@R understands and acknowledges the applicability of the American With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of

1989 to it. The CM@R agrees to comply with these laws in performing this Contract and to permit GILBERT to verify such compliance.

**6.14.2 Immigration Law Compliance Warranty:**

- 6.14.2.1 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.
- 6.14.2.2 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.
- 6.14.2.3 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 Contractor 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).
- 6.14.2.4 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.
- 6.14.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

**6.14.3 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 from or based on the violation of such, whether by CM@R or its employees.

**6.14.4 Israel.** CM@R certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in Ariz. Rev. Stat. § 35-393.

**6.15 CONFLICT OF INTEREST**

- 6.15.1 To evaluate and avoid potential conflicts of interest, the CM@R will provide written notice to GILBERT, as set forth in this section, of any work or services performed by the CM@R for third parties that may involve or be associated with any real property or personal property owned or leased by GILBERT. Such notice will be given seven business days prior to commencement of the Project by the CM@R for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to \_\_\_\_\_.
- 6.15.2 Actions considered adverse to GILBERT under this Contract include but are not limited to:
- 6.15.2.1 Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against GILBERT.
  - 6.15.2.2 Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against GILBERT.
  - 6.15.2.3 Using data to produce income for the CM@R or its employees independently of performing the services under this Contract, without the prior written consent of GILBERT.
- 6.15.3 The CM@R represents that except for those persons, entities and projects previously identified in writing to GILBERT, the services to be performed by the CM@R under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of GILBERT.
- 6.15.4 The CM@R's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

## **6.16 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE**

Prior to award of the Contract, the CM@R must provide to the Town Clerk, its Contractor's License Classification and number, its Town of Gilbert Privilege Tax License number, Arizona Privilege Tax License number, and its Federal Tax I.D. number. A copy of the transmittal should be sent to GILBERT's Representative.

## **6.17 CM@R'S TAX LIABILITIES**

CM@ Risk will be liable for payment of all state of Arizona and Maricopa County Transaction Taxes (ARS 41-1305) and Town of Gilbert Privilege Tax License number and Arizona Privilege Tax License number on the successful bidder's construction contracting receipts. Failure to remit the proper taxes to GILBERT may result in the withholding of payment until all delinquent privilege taxes, interest, and penalty have been paid.

## **6.18 SUCCESSORS AND ASSIGNS**

GILBERT and the CM@R will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither GILBERT nor the CM@R will assign, sublet, or transfer its interest in this Contract

without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and GILBERT.

#### **6.19 FORCE MAJEURE**

If either party is delayed or prevented from the performance of any service, in whole or in part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay. No increase in contract amount will be allowed. CM@R's sole compensation will be an extension of time only.

#### **6.20 COVENANT AGAINST CONTINGENT FEES**

The CM@R warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage of contingent fee, and that no member of the Town Council, or any employee of the Town of Gilbert has any interest, financially, or otherwise, in the firm. The Town of Gilbert will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

#### **6.21 NON-WAIVER PROVISION**

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

#### **6.22 JURISDICTION**

This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

#### **6.23 SURVIVAL**

All warranties, representations and indemnifications by the CM@R will survive the completion or termination of this Contract.

#### **6.24 MODIFICATION**

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

#### **6.25 SEVERABILITY**

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

#### **6.26 INTEGRATION**

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

#### **6.27 TIME IS OF THE ESSENCE**

Time of each of the terms, covenants, and conditions of the Contract is hereby expressly made of the essence.

#### **6.28 THIRD PARTY BENEFICIARY**

The Contract will not be construed to give any rights or benefits in the Contract to anyone other than GILBERT and the CM@R. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of GILBERT and the CM@R and not for the benefit of any other party.

#### **6.29 COOPERATION AND FURTHER DOCUMENTATION**

The CM@R agrees to provide GILBERT such other duly executed documents as may be reasonably requested by GILBERT to implement the intent of this Contract.

#### **6.30 CONFLICT IN LANGUAGE**

All work or Deliverables performed will conform to all applicable Town of Gilbert codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

#### **6.31 GILBERT'S RIGHT OF CANCELLATION**

All parties hereto acknowledge that this Contract is subject to cancellation by the Town of Gilbert pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

## **7.0 INSURANCE**

- 7.1** The CM@R will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables, hereunder by the CM@R, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. If this is an OCIP Project, this Article will apply only to the pre-construction services described herein. Insurance requirements related to any construction Work done during the preconstruction phase will be defined in a separate contract associated with that phase. The CM@R will cause all Subcontractors to contain identical terms and conditions to those included in this Article.
- 7.2** The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Contract by the CM@R, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@R is free to purchase such additional insurance as it may determine necessary.

IN WITNESS WHEREOF, GILBERT and the CM@R have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: \_\_\_\_\_  
Name, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

CONSTRUCTION-MANAGER-AT-RISK

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

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

## **EXHIBIT A**

### **HOURLY RATE SCHEDULE (CM@R)**

#### **HOURLY RATE REQUIREMENTS AND LIMITATIONS:**

The schedule of hourly rates for employees of the CM@R and its Subconsultants follow and are based on the proposal submitted to GILBERT on \_\_\_\_\_, 20\_\_\_. The definitions and limits below apply to the rates as submitted.

Direct Labor Cost is defined as the total amount actually paid by CM@R in salaries for its staff for time directly expended on the Project for services rendered. The maximum labor rate will be \$\_\_\_\_\_ per hour.

Indirect Cost (Overhead) is defined as the general and administrative overhead burden. Indirect Cost will be calculated as a percentage of the Direct Labor Cost. The maximum allowable markup for indirect costs is 115% of the direct labor costs.

Fixed Fee is defined as a fixed amount to provide an operating margin, readiness to serve, risk, and profit. The maximum allowable markup for fixed fee is 10% of the direct labor and indirect costs.

#### **LIST OF EMPLOYEES AND SUBCONSULTANTS:**

<u>Position</u>	<u>Direct Labor Rates</u>	<u>Total Labor Rate</u>
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[CM@R to provide position titles, names and labor rates]



## **EXHIBIT B**

### **GUARANTEED MAXIMUM PRICE (GMP) Proposal (CM@R)**

The Guaranteed Maximum Price (GMP) proposal shall be completed at the time of submittal of the GMP for the Project and include associated backup information. The GMP, if approved, will be separately approved with the approval of the Construction Services Contract. If the Project will be constructed in Construction Phases, a separate GMP shall be approved for each Construction Phase.

Exhibit C – Total Project Cost shall be used with Exhibit B in completing the Guaranteed Maximum Price (GMP) Proposal.

**Indirect Cost percentages as identified in paragraph 2.6.2 shall be established prior to executing the Contract.**

Use Form 4.4 Cost Model

## **EXHIBIT C**

### **TOTAL PROJECT COST (CM@R)**

**1. Cost of the Work.** The term "Cost of the Work" shall mean construction costs associated with project specification Divisions 1-16 incurred by the CM@R in the performance of the Work. The following are categories of cost and expense to be paid by GILBERT to the CM@R as Cost of the Work and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B:

#### **1.2 Horizontal Construction**

- 1.2.1 A1 Labor and Burden
- 1.2.2 A2 Equipment (Owned and Rented)
- 1.2.3 A3 Materials, Supplies, and Fees
- 1.2.4 A4 Subcontracts
- 1.2.5 A5 Allowances and Contingencies

#### **1.3 Vertical Construction**

- 1.3.1 A1 Labor and Burden
- 1.3.2 A2 Equipment (Owned and Rented)
- 1.3.3 A3 Materials, Supplies, and Fees
- 1.3.4 A4 Subcontracts
- 1.3.5 A5 Allowances and Contingencies

**1.4 Fines and Penalties.** If fines or monetary penalties are levied against the CM@R they shall not be included in the "Cost of the Work" calculation and shall not be a part of the GMP.

#### **2. Construction Costs**

##### **2.1 Labor and Burden Costs**

- 2.1.1 Wages of construction workers directly employed by the CM@R to perform the construction of the Work at the Site or, with GILBERT's agreement, at off-site workshops.
- 2.1.2 Wages or salaries of the CM@R's supervisory and administrative personnel when stationed at the Site and wages, salaries and other costs of project management, preconstruction services, form design, foundation engineering, manpower planning, purchasing, estimating and data processing, whether performed at the Site or in the

CM@R's offices, including, but not limited to services rendered during the Design Phase of the Project.

- 2.1.3 Wages and salaries of the CM@R's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- 2.1.4 Burden: Costs paid or incurred by the CM@R for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in subsections 2.1.1 through 2.1.3 above.
- 2.2 Equipment (Owned and Rented).** Costs, including transportation equipment incorporated or to be incorporated in the completed construction.

### **2.3 Materials, Supplies, and Fees Costs**

- 2.3.1 Costs of materials in excess of those actually installed which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to GILBERT at the completion of the Work, or at GILBERT's option, shall be sold by the CM@R, amount realized, if any, from such sales shall be credited to GILBERT as a deduction from the Cost of the Work.
- 2.3.2 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM@R at the Site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by the CM@R. Costs for items previously used by the CM@R shall mean fair market value.
- 2.3.3 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM@R at the Site, whether rented from the CM@R or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for equipment owned by the CM@R shall be at then prevailing rates.
- 2.3.4 Costs of removal of debris from the Site.
- 2.3.5 Costs of facsimiles, telegrams and long distance telephone calls, postage and delivery charges (whether originating at the Site or at the offices of the CM@R telephone service at the Site and reasonable petty cash expenses of the Site office.
- 2.3.6 That portion of the reasonable travel and subsistence expenses of the CM@R's personnel incurred while traveling in discharge of duties connected with the Work.

- 2.3.7 Fees and assessments for any permits, licenses and inspections required by the Contract Documents.
- 2.3.8 Fees of testing laboratories for tests required by the Contract Documents or governmental authorities.
- 2.3.9 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. The costs of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the CM@R resulting from such suits or claims and payments of settlements in connection therewith.
- 2.3.10 Deposits lost for cause other than the CM@R'S negligence.

**2.4 Subcontractor Costs.** Amounts due Subcontractors in accordance with the requirements of the Subcontracts.

## **2.5 Allowance and Contingencies Costs**

- 2.5.1 Those Owner controlled costs identified as Construction Allowances associated with work items that have been specifically defined through negotiations with GILBERT and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B with associated pricing.
- 2.5.2 The contractor contingency belongs to the CM@R if it is needed but is returned to GILBERT if it goes unused. It reflects the incomplete nature of the drawings and specifications at the time the GMP is established and may be used to cover unanticipated costs that arise during construction. Written approval from GILBERT is required for CM@R use of this contingency.

**3. Indirect Costs.** The term "Indirect Costs" shall mean costs not associated with project Specification Divisions 1-16 incurred off the project site by the CM@R in the performance of the Work. Reimbursement for these categories of cost shall be at the fixed rate percentages contained in Exhibit B and the following are categories of cost and expense to be paid by GILBERT to the CM@R as Indirect Costs and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B.

## **3.1 General Conditions**

- 3.1.1 Salaries and other compensation of the CM@R's personnel stationed at the CM@R's principal office or offices other than the Site, except as specifically provided in subsections 2.1.3 and 2.1.3 above.
- 3.1.2 Expenses of the CM@R's principal office and offices, other than the Site office.
- 3.1.3 Overhead and general expenses, except as may be included in Sections 1 and 2 above.
- 3.1.4 The capital expenses of the CM@R, including interest on capital employed for the Work.

- 3.1.4 Home office profit and overhead expenses.
- 3.1.5 Any bonuses awarded by to the CM@R to its employees or subcontractors.
- 3.2 **Fee.** “Fee” means the profit payable to the CM@R, which is a part of the GMP, as more fully described on Exhibit B attached hereto.
- 3.3 **Bonds.** “Bonds” refers to the Payment and Performance Bonds identified in Part III of the CM@R General Conditions that shall be furnished to GILBERT prior to the commencement of Construction Work on the Site.
- 3.4 **Insurance.** “Insurance” to be provided is described in paragraph 7 and Part III of the CM@R General Conditions.
- 3.5 **Sales Taxes.** “Sales Taxes” refers to those sums to be paid as a percentage of the GMP.
- 3.6 **Preconstruction Services.** Those services identified in this Contract that are to be performed during the design phases of the Project by the CM@R in support of the A/E and GILBERT.
- 3.7 **Total Project Cost.** Total Project Cost is the sum total of the GMP, Preconstruction Services, and any prior phase GMPs.

**EXHIBIT D**  
**PROJECT DESCRIPTION (CM@R)**

[Add project description for which pre-construction services are being performed by the CM@R]

## **EXHIBIT E**

### **COST ESTIMATE DEVELOPMENT LOG**

[Add project Cost Estimate Development Log to be maintained by the CM@R]