



CITY OF MESA, ARIZONA

PROJECT NAME

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES CONTRACT**

PROJECT NO.





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Construction Manager at Risk
Construction Services
Project No.: _____
Project Name: _____

2.1 CONTRACT DOCUMENTS

The Contract between City and Contractor shall consist of the following Contract Documents:

1. This Contract and all of its Exhibits, including Technical Specifications and Plans
2. General Conditions, dated _____, and General Conditions Appendices, incorporated by reference.*
3. Project Specific Provisions

* <http://mesaaz.gov/business/engineering/engineering-contracts>

2.2 DEFINITIONS

The definitions in Sections 2 and 15.1 of the General Conditions apply to all the Contract Documents, including this Agreement. Additional definitions or defined terms applicable to all the Contract Documents for this Project, if any, include the following:

(If any, to be added by PM)

2.3 PROJECT SPECIFIC PROVISIONS

If there are any additional conditions that apply to this Project, they are set forth in the attached Exhibit D, and are incorporated herein.

2.4 PROJECT PLANS AND SPECIFICATIONS

A detailed list of the Plans and Specifications for this Project are set forth in the attached Exhibit D.

ARTICLE 3 – PRE-CONSTRUCTION SERVICES

Although CMAR has performed Pre-Construction Services pursuant to a separate Contract between City and CMAR, the completion, quality and accuracy of those services and the deliverables provided by City thereunder directly impact CMAR's performance of its obligations under this Contract. Therefore, all of CMAR's obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Contract and are incorporated herein. Any breach of any of CMAR's duties, obligations, or warranties under the Pre-Construction Services Contract shall likewise be considered a breach of this Contract.

ARTICLE 4 – CONSTRUCTION SERVICES

4.1 GENERAL

- 4.1.1 CMAR agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, stated in attached Exhibit A.
- 4.1.2 CMAR shall provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some but not all of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.
- 4.1.3 At all times relevant to the Contract and performance of the Work, the CMAR shall fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project and the Contract, including, without limitation, those set forth on attached Exhibit C.
- 4.1.4 CMAR shall perform the Work under this Contract using only those firms, team members and individuals designated by CMAR consistent with the Statement of Qualifications dated _____, the GMP Proposal, or otherwise approved by City pursuant to the General Conditions. No other entities or individuals may be used without prior approval of the Project Manager.
- 4.1.5 CMAR will comply with all terms and conditions of the General Conditions.

4.1.6 In the event of a conflict between this Contract and the General Conditions or any exhibit hereto or appendix thereto, the terms of this Contract shall control.

4.1.7 **Ownership of Work Product.** Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this section are exclusive to City in perpetuity.

4.2 CONTRACTOR'S PRE-CONTRACT AND PRE-WORK DELIVERABLES

4.2.1 The CMAR will provide the Deliverables in accordance with Section 4.2 of the General Conditions.

4.2.2 Any additional items which CMAR must deliver to City prior to commencing the Work on this Project, if any, include the following:

(If any, to be added by PM)

4.3 PRE-CONSTRUCTION CONFERENCE

CMAR shall attend the Pre-Construction Conference in accordance with Section 4.3 of the General Conditions.

4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)

CMAR shall perform the Work in accordance with Section 4.4 of the General Conditions.

4.5 CONTROL OF THE PROJECT SITE

CMAR shall control and maintain the Project Site in accordance with Section 4.5 of the General Conditions.

4.6 PROJECT SAFETY

CMAR shall implement and enforce Project safety in accordance with Section 4.6 of the General Conditions.

4.7 MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS

CMAR shall provide materials testing and submit substitute materials and Shop Drawings in accordance with Section 4.7 of the General Conditions.

4.8 PROJECT RECORD DOCUMENTS

CMAR shall maintain and make available the Project Record Documents in accordance with Section 4.8 of the General Conditions.

4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK

CMAR shall provide warranties and correct defective Work in accordance with Section 4.9 of the General Conditions.

ARTICLE 5 – CITY RESPONSIBILITIES

5.1 City shall have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

5.2 Additional services to be provided and responsibilities assumed, by City, if any, are listed below:

(If any, to be added by PM)

5.3 Additional information to be provided by City, if any, is listed below:

(If any, to be added by PM)

ARTICLE 6 – CONTRACT TIME

Contract Duration is _____ Calendar Days.

6.1 CONTRACT TIME

6.1.1 The Contract Time shall start with the Notice to Proceed (“NTP”) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued prior to the approval and acceptance by City of the GMP or Fixed Price.

6.1.2 CMAR agrees that it will commence performance of the Work and complete the Project through Final Acceptance within the Contract Time.

6.1.3 Time is of the essence of this Contract, for the Project, and for each phase and/or designated Milestone thereof.

6.2 PROJECT SCHEDULE

The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached Exhibit A shall be updated and maintained throughout CMAR’s performance under this Contract in accordance with Section 6.2 of the General Conditions.

6.2.1 Failure on the part of CMAR to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination for cause of this Contract by City.

6.3 SUBSTANTIAL COMPLETION

NOTE TO PROJECT MANAGER –

Typically used for vertical projects, parks, and certain pump projects. PM to discuss with Supervising Engineer.

☐ APPLIES

☐ DOES NOT APPLY

Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion shall be determined in accordance with Section 6.3 of the General Conditions.

6.4 FINAL ACCEPTANCE

6.4.1 Final Acceptance will be obtained within the time period set forth in the Project Schedule.

6.4.2 Final Acceptance will be issued, pursuant to Section 6.4 of the General Conditions.

6.5 LIQUIDATED DAMAGES

NOTE TO PM: If there is a client department required completion deadline, Liquidated Damages apply.

6.5.1 Substantial Completion Liquidated Damages. CMAR acknowledges and agrees that if CMAR fails to achieve Substantial Completion of the Work in accordance with General Conditions Section 6.3, City will

sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, City and CMAR agree that if CMAR fails to achieve Substantial Completion of the Work within the time set forth in Article 6.3 above, City shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amounts commencing from the Substantial Completion Date required under the Contract until the actual date of Substantial Completion:

\$ (to be added by PM if applicable) per calendar day.

- 6.5.2 **Final Acceptance Liquidated Damages.** For the same reasons set forth in Article 6.5.1 above, City and CMAR further agree that if CMAR fails to achieve Final Acceptance of the Work within the time set forth in Article 6.4.1 above, City shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amounts commencing from the actual date of Substantial Completion or Final Acceptance as required under the Contract.

\$ (to be added by PM if applicable) per calendar day.

- 6.5.3 **MAG Liquidated Damages.** If no liquidated damages are specified in Articles 6.5.1 and/or 6.5.2 above, then the liquidated damages provisions in MAG § 108.9 shall apply.
- 6.5.4 City may deduct liquidated damages described in this Article 6.5 above from any unpaid amounts then or thereafter due CMAR under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due CMAR shall be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by CMAR.

6.6 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY

- 6.6.1 CMAR and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:
1. Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 2. Damages incurred by CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- 6.6.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Contract. Nothing contained in this Article 6.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 6.5 above.
- 6.6.3 Nothing herein shall be deemed to constitute a waiver of any other remedy available to City in the event of CMAR's default under this Contract prior to full performance of the Work including, as applicable, specific performance of completion of the Work on behalf of CMAR, the cost and expense of which shall be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by CMAR.

ARTICLE 7 – CONTRACT PRICE

7.1 CONTRACT PRICE

- 7.1.1 In exchange for CMAR's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, City will pay CMAR the "Contract Price" which:

The sum of the CMAR's Fee and reimbursable Cost of the Work, as defined in Section 15 of the General Conditions, which the CMAR guarantees will not exceed the GMP set forth in Exhibit A in the amount of \$_____. Costs which would cause the GMP to be exceeded shall be paid by CMAR without reimbursement from City.

- 7.1.2 The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes any type necessary to fully, properly and timely perform and construct the Work encompassed in attached Exhibit A.

7.2 COSTS

For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials basis, the costs which may be reimbursed to CMAR and/or chargeable against the Contract Price shall be determined as set forth in Section 15 of the General Conditions.

ARTICLE 8 – PAYMENT

Payments shall be made to CMAR in accordance with Section 8 (and 15 if the Contract Price is a GMP) of the General Conditions.

ARTICLE 9 – CHANGES TO THE CONTRACT

Changes to the Contract may be made in strict accordance with Section 9 of the General Conditions.

ARTICLE 10 – SUSPENSION AND TERMINATION

This Contract may be suspended and/or terminated in accordance with Section 10 of the General Conditions.

ARTICLE 11 – INSURANCE AND BONDS

- 11.1 CMAR shall provide insurance as provided on the attached Exhibit B, and in accordance with Section 11.1 of the General Conditions. CMAR shall provide proof of such insurance and all required endorsements in form acceptable to City prior to commencing any Work under this Contract.
- 11.2 CMAR shall provide performance and payment bonds to City in accordance with Section 11.2 of the General Conditions and A.R.S. § 34-610(A).
- 11.3 Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to City will be material breach and grounds for termination for cause of this Contract by City.

ARTICLE 12 – INDEMNIFICATION

CMAR shall have and assume the indemnity obligations set forth in Section 12 of the General Conditions.

ARTICLE 13 – DISPUTE RESOLUTION

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in Section 13 of, and Appendix 8 to, the General Conditions.

ARTICLE 14 – MISCELLANEOUS PROVISIONS

This miscellaneous provisions set forth in Section 14 of the General Conditions shall apply to this Contract.

Construction Manager at Risk
Construction Services Contract
Project No. _____



IN WITNESS WHEREOF, the parties hereto executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

"CITY"

CITY OF MESA

Signature _____

Name _____

Title _____

"CMAR"

COMPANY NAME

Signature _____

Name _____

Title _____



EXHIBIT A – ACCEPTED GMP/PRICE PROPOSAL

(PAGES)

NOTE TO PROJECT MANAGER & CONTRACT SERVICES SPECIALIST –
Page numbers to be added to the GMP/Price Proposal.

All terms and conditions are set forth in the Contract. Any terms and conditions and/or exceptions noted in the Contractor's proposal, GMP, or other documents do not apply unless agreed to in this Contract or an approved addendum.

EXHIBIT B – INSURANCE REQUIREMENTS

(4 PAGES, INCLUDING THIS PAGE)

MINIMUM INSURANCE REQUIREMENTS

Some of the following requirements apply to only design professionals and some apply only to contractors. Requirements will be enforced based on the type of contract.

Contractor/Design Professional shall obtain and submit to City before any Work is performed, certificates from the Contractor's/Design Professional's insurance carriers indicating the presence of coverages and limits of liability as follows.

The City only accepts the most recent version of ACORD® Certificate of Liability Insurance form with additional insured endorsements. The Builder's Risk policy (if required) shall remain in effect during construction through the date of project Final Acceptance. The remainder of the insurance policies shall remain in effect during construction and through the one-year warranty period that follows project Final Acceptance, unless otherwise specified in contract documents. Proof of all required coverage(s) shall be provided by the Contractor/Design Professional.

Policy forms must include:

- A. Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions;
- B. Products and Completed Operations coverage. Contractor/Design Professional agrees to maintain this coverage for a minimum of 10 years following completion of the Contractor/Design Professional Work and to continue to name City as an Additional Insured for the entire 10-year period;
- C. Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted;
- D. Broad Form Property Damage coverage, including completed operations or its equivalent;
- E. An endorsement in a form acceptable to the City, naming City, any other party required to be named as an additional insured under the Contract Documents, and any other parties in interest as Additional Insured(s) under the coverage specified under Comprehensive General Liability or Commercial General Liability. Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages **IS NOT ACCEPTABLE**;
- F. An endorsement in a form acceptable to the City, stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and except for any builder's risk property insurance coverage that may be purchased and maintained by City in connection with the Project, any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy;"
- G. Coverage SHALL BE on an "Occurrence" form. **"Claims Made"** and **"Modified Occurrence"** forms are not acceptable;
- H. Coverage to include general aggregate limits on a "per project" basis;

1. Workers' Compensation (required for both Contractors/Design Professionals):

Coverage A. Statutory Benefits

Coverage B. Employer's Liability

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee



2. Commercial Auto Coverage (required for both Contractors and Design Professionals):

Auto Liability limits of not less than \$1,000,000 Combined Single Limit (Each Accident), combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto, All Owned, Scheduled, Hired, or Non-Owned."

If the Contract Documents require Contractor/Design Professional to remove and haul hazardous waste from the Project site, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

3. Commercial General Liability (required for both Contractors/Design Professionals):

Each Occurrence Limit	\$2,000,000
Personal Injury/Advertising Injury Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$4,000,000

4. Excess Liability:

Umbrella or Excess Liability may be used to satisfy the above Auto and General Liability coverage requirements and limits to reach a total combined limit of:

Auto	Amount sufficient to cover difference in limits when compared to minimum coverage required.
Each Occurrence	Amount sufficient to cover difference in limits when compared to minimum coverage required.
Aggregate	Amount sufficient to cover difference in limits when compared to minimum coverage required.

5. Professional Liability (required for Design Professionals only):

(Applicable only to Design Professional services which are part of Work.)

Coverage provided must have no exclusion for design-build projects. Contractor/Design Professional must provide evidence of coverage for three (3) years beyond completion of the Project.

Coverage Amount: \$2,000,000 per claim/\$4,000,000 aggregate, unless higher coverage limits are required under the Contract Documents, in which case such higher limits shall apply.

6. Pollution Legal Liability: \$1,000,000 per Occurrence
\$1,000,000 Aggregate Limit

(Applicable to any pollutants or hazardous waste exposures as part of Work, except for CMAR Pre-Construction services work.)

Contractor shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

7. Builders Risk (if required, will be required for Contractors only):

Contractor shall include in its Cost Proposal the cost to obtain builders risk or "all risk" or equivalent policy form coverage in the amount of the initial Contract Price. This required insurance coverage is required on projects that are typically outside the public rights-of-way whereby the City is constructing or modifying a public building. The City may, at the City's sole option, purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial Contract Price, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the City, Contractor and its subcontractors in the Project, and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. City shall bear the responsibility for the deductible for such coverage when a loss affects the Work, provided, however, to the extent such loss is attributable to the negligent or wrongful acts or omissions of Contractor or someone for whom Contractor is responsible, Contractor shall bear the responsibility of the deductible. Such property insurance will not cover any tools or equipment owned or rented by Contractor that will not be incorporated into the Project, including trailers, excavators, scaffoldings, or forms. Contractor is responsible for providing insurance coverage for such items.

8. Other Requirements:

- A. All policies must be written by insurance companies whose rating, in the most recent AM Best's Rating Guide, is not less than A-. All coverage forms must be acceptable to City.
- B. ACORD® Certificate of Liability Insurance form with the required endorsements evidencing the required coverages must be PROVIDED to the City prior to commencement of any Work. Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's/Design Professional's obligation to maintain such insurance. City shall have the right, but not the obligation, to prohibit Contractor/Design Professional or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by City.
- C. The policies shall provide waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay for the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

The following policies shall include Waiver of Subrogation endorsements:

- Workers' Compensation
- Commercial Auto Coverage
- Commercial General Liability
- Pollution Legal Liability

- D. The following policies shall include Additional Insured endorsements:
 - Commercial Auto Coverage
 - Commercial General Liability
 - Excess Liability
 - Builders Risk



- E. Contractor/Design Professional shall be responsible for satisfying any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents to be provided by Contractor/Design Professional.
- F. City reserves the right, in its sole discretion, to require higher limits of liability coverage if, in City's opinion, operations by or on behalf of Contractor/Design Professional create higher than normal hazards and, to require Contractor/Design Professional to name additional parties in interest to be Additional Insureds.
- G. In the event that rental of equipment is undertaken by Contractor/Design Professional or any Subcontractor to complete and/or perform the Work, Contractor/Design Professional agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
- H. In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Contractor/Design Professional agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
- I. Any additional provisions specific to the Project are attached. In the event of any conflict between the attached terms and the terms of this Exhibit, Contractor/Design Professional shall comply with the more stringent provisions.

If a policy does expire, a renewal certificate of the required coverage shall be sent to the City of Mesa not less than five (5) days prior to the expiration date or, if a policy is to be cancelled, changed or not renewed, a proper notice of such action shall be sent to the City not less than ten (10) days prior to any such action by the insurance company.

Notice shall be sent to: City Engineer
City of Mesa
P.O. Box 1466
Mesa, AZ 85211-1466



EXHIBIT C – COMPLIANCE WITH SPECIFIC GOVERNMENT PROVISIONS

(1 PAGE)

NOTE TO PROJECT MANAGER & CONTRACT SERVICES SPECIALIST –

The City must comply with specific government provisions. These provisions must be reviewed and approved by the Contract Services Specialist (CSS). In addition, the CSS is to confirm funding for this project.



EXHIBIT D – PROJECT SPECIFIC PROVISIONS AND PROJECT PLANS AND SPECIFICATIONS

(PAGES)

NOTE TO PROJECT MANAGER – To be completed by PM.

- 1. Special Conditions – See attached Project Specific Provisions**
- 2. Technical Specifications**
Specification Title: _____ Date: _____
- 3. Plans**
Drawing Title: _____ Date: _____
Project Number: _____
Drawing 'A' Number: A-_____ to A-_____