REVISED
ITEM #7

Project Name: Saint Xavier University
Project No.: RD115
Contract No. 2014-2106-0152:

PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT (PM/CM) SERVICES CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK (CM@R) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____ of the year 20____, by and between the Town of Gilbert, Arizona, a municipal corporation (hereinafter referred to as "GILBERT") and **Abacus Project Management Inc,** (hereinafter referred to as the "**PM/CM**").

FOR THE PURPOSE of providing professional project management/construction management services for the Town of Gilbert on the **RD115 St. Xavier University Project**, more specifically described in Exhibit A and hereinafter referred to as the "**Project**", GILBERT and PM/CM do hereby mutually agree to the following:

1. RELATIONSHIP OF THE PARTIES

1.1 GILBERT and PM/CM

PM/CM shall act as GILBERT's fiduciary and shall furnish the services described in Exhibit A of this Contract ("Services"). PM/CM and GILBERT shall perform as stated in this Contract. PM/CM accepts the relationship of trust and confidence between it and GILBERT established by this Contract. PM/CM understands the Project is a Construction-Manager-at-Risk (CM@R) project pursuant to Arizona Revised Statutes, Title 34, Chapter 6.

1.1.1 Conflict of Interest: PM/CM agrees that its officers and employees do not now have a conflict of interest with respect to any aspect of this Contract and that PM/CM, its officers or employees will not contract for or accept employment for the performance of any work or service with any individual business, corporation or government unit that would create a conflict of interest in the performance of the Services. PM/CM further agrees that during the term of this Contract PM/CM will not enter into contracts with an architect, engineer or contractor that has a contract to perform work or services related to the Project.

1.1.2 Standard of Care: PM/CM covenants with GILBERT to furnish its best skill and its best judgment in all matters related to the Project and in all ways to further the interests of GILBERT and the Project. PM/CM's services shall be rendered in accordance with this Contract, professional standards for project managers and construction managers as adopted by the Construction Managers' Association of America (CMAA), and applicable federal, state and local laws and regulations. PM/CM shall furnish the Services in an efficient manner and shall use its best efforts to see that the Project is completed in conformity with the Contract Documents in the best and most expeditious, economical manner consistent with the interest of GILBERT.

1.1.3 PM/CM'S Project Representative: The PM/CM'S Project Representative shall be **Richard Carr.** All communications from GILBERT to PM/CM, the architect or engineering firm and the Contractor shall be directed to the Project Representative. This designation shall not be changed without GILBERT's prior approval. PM/CM

days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

8.10.1 GILBERT, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

A. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent
B. Auto Liability-Under ISO Form CA 20 48 or equivalent
C. Excess Liability-Follow Form to underlying insurance

8.10.2 PM/CM'S insurance shall be primary insurance as respects performance of this Contract.

8.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by PM/CM under this Contract.

8.10.4 All Certificates, except the General Liability policy, shall cite a thirty (30) day advance notice cancellation provision, except in the case of non-payment, which will be a 10-day advance notice.

8.10.5 Project descriptive information including:

A. St. Xavier University
B. RD115
C. 2014-2106-0152

8.11 Required Coverage:

8.11.1 Commercial General Liability: PM/CM shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate, and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the

requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.2 Professional Liability: PM/CM shall maintain Professional Liability insurance covering errors and admissions arising out of the work or services performed by PM/CM, or anyone employed by PM/CM, or anyone for whose acts, mistakes, errors and omissions PM/CM is legally liable, with an unimpaired liability insurance limit of $1,000,000 each claims and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and PM/CM shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

8.11.3 Vehicle Liability: PM/CM shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each accident on PM/CM'S owned, hired, and non-owned vehicles assigned to or used in the performance of the PM/CM'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.4 Workers' Compensation Insurance: PM/CM shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of PM/CM'S employees engaged in the performance work or services under this Contract and shall also maintain Employer Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

8.12 Indemnification:

8.12.1 To the fullest extent permitted by law, PM/CM, 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 PM/CM or other persons employed or used by the PM/CM in the performance of this Agreement. PM/CM'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 PM/CM's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or

Gilbert, Arizona 85234 Phoenix, Az. 85012

This Contract is executed as of the day and year first written above.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Kelly Schwab, Special Counsel

ABACUS PROJECT MANAGEMENT, INC.
PROJECT MANAGER/CONSTRUCTION MANAGER

_____
By: Russell Thompson
Title: Managing Principal

_____
By: Jeff Turner
Title: Principal

ITEM 7

Project Name: Saint Xavier University
Project No.: RD115
Contract No. 2014-2106-0152:

PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT (PM/CM) SERVICES CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK (CM@R) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____ of the year 20____, by and between the Town of Gilbert, Arizona, a municipal corporation (hereinafter referred to as "GILBERT") and **Abacus Project Management Inc,** (hereinafter referred to as the "**PM/CM**").

FOR THE PURPOSE of providing professional project management/construction management services for the Town of Gilbert on the **RD115 St. Xavier University Project**, more specifically described in Exhibit A and hereinafter referred to as the "**Project**", GILBERT and PM/CM do hereby mutually agree to the following:

1. RELATIONSHIP OF THE PARTIES

1.1 GILBERT and PM/CM

PM/CM shall act as GILBERT's fiduciary and shall furnish the services described in Exhibit A of this Contract ("Services"). PM/CM and GILBERT shall perform as stated in this Contract. PM/CM accepts the relationship of trust and confidence between it and GILBERT established by this Contract. PM/CM understands the Project is a Construction-Manager-at-Risk (CM@R) project pursuant to Arizona Revised Statutes, Title 34, Chapter 6.

1.1.1 Conflict of Interest: PM/CM agrees that its officers and employees do not now have a conflict of interest with respect to any aspect of this Contract and that PM/CM, its officers or employees will not contract for or accept employment for the performance of any work or service with any individual business, corporation or government unit that would create a conflict of interest in the performance of the Services. PM/CM further agrees that during the term of this Contract PM/CM will not enter into contracts with an architect, engineer or contractor that has a contract to perform work or services related to the Project.

1.1.2 Standard of Care: PM/CM covenants with GILBERT to furnish its best skill and its best judgment in all matters related to the Project and in all ways to further the interests of GILBERT and the Project. PM/CM's services shall be rendered in accordance with this Contract, professional standards for project managers and construction managers as adopted by the Construction Managers' Association of America (CMAA), and applicable federal, state and local laws and regulations. PM/CM shall furnish the Services in an efficient manner and shall use its best efforts to see that the Project is completed in conformity with the Contract Documents in the best and most expeditious, economical manner consistent with the interest of GILBERT.

1.1.3 PM/CM'S Project Representative: The PM/CM'S Project Representative shall be **Richard Carr.** All communications from GILBERT to PM/CM, the architect or engineering firm and the Contractor shall be directed to the Project Representative. This designation shall not be changed without GILBERT's prior approval. PM/CM

days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

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A. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent
B. Auto Liability-Under ISO Form CA 20 48 or equivalent
C. Excess Liability-Follow Form to underlying insurance

8.10.2 PM/CM'S insurance shall be primary insurance as respects performance of this Contract.

8.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by PM/CM under this Contract.

8.10.4 All Certificates, except the General Liability policy, shall cite a thirty (30) day advance notice cancellation provision, except in the case of non-payment, which will be a 10-day advance notice.

8.10.5 Project descriptive information including:

A. St. Xavier University
B. RD115
C. 2014-2106-0152

8.11 Required Coverage:

8.11.1 Commercial General Liability: PM/CM shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate, and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the

Gilbert, Arizona 85234 Phoenix, Az. 85012

This Contract is executed as of the day and year first written above.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Kelly Schwab, Special Counsel

ABACUS PROJECT MANAGEMENT, INC.
PROJECT MANAGER/CONSTRUCTION MANAGER

_____
By: Russell Thompson
Title: Managing Principal

_____
By: Jeff Turner
Title: Principal

8.11.2 Professional Liability: PM/CM shall maintain Professional Liability insurance covering errors and admissions arising out of the work or services performed by PM/CM, or anyone employed by PM/CM, or anyone for whose acts, mistakes, errors and omissions PM/CM is legally liable, with an unimpaired liability insurance limit of $1,000,000 each claims and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and PM/CM shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

8.11.3 Vehicle Liability: PM/CM shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each accident on PM/CM'S owned, hired, and non-owned vehicles assigned to or used in the performance of the PM/CM'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.4 Workers' Compensation Insurance: PM/CM shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of PM/CM'S employees engaged in the performance work or services under this Contract and shall also maintain Employer Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

8.12 Indemnification:

8.12.1 To the fullest extent permitted by law, PM/CM, 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 PM/CM or other persons employed or used by the PM/CM in the performance of this Agreement. PM/CM'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 PM/CM'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 PM/CM or used by PM/CM in the performance of this Agreement

GILBERT
ARIZONA

7

Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: EDGAR MEDINA, P.E. ASSISTANT TOWN ENGINEER, (480) 503-6754

THROUGH: TOM CONDIT, P.E. ACTING TOWN ENGINEER
KYLE MIERAS, AICP, DEVELOPMENT SERVICES DIRECTOR
MARC SKOCYPEC, DEPUTY TOWN MANAGER

MEETING DATE: JANUARY 30, 2014

SUBJECT: APPROVAL OF A PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT SERVICES CONTRACT WITH ABACUS FOR THE ST. XAVIER UNIVERSITY PROJECT.

STRATEGIC INITIATIVE: Economic Development

This project supports Gilbert's strategic initiative for Economic Development as the establishment of a university in the Heritage District will enhance the educational opportunities for residents in Gilbert and residents in the region and will generate additional commercial activities in the Heritage District.

LEGAL REVIEW	FINANCIAL REVIEW
☑ Complete	☑ Complete
☐ N/A	☐ N/A

RECOMMENDED MOTION

- **APPROVE A PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT SERVICES CONTRACT WITH ABACUS FOR THE ST. XAVIER UNIVERSITY PROJECT, CIP NO. RD115, CONTRACT NO. 2014-2106-0152, IN AN AMOUNT NOT TO EXCEED $741,379 AND AUTHORIZE THE MAYOR TO EXECUTE THE REQUIRED DOCUMENTS, AND;**

- **APPROVE THE USE OF CIP CONTINGENCY FOR BUDGET APPRPRIATION AND THE USE OF GENERAL FUND AS THE REVENUE SOURCE FOR THIS EXPENDITURE.**

BACKGROUND/DISCUSSION

In November 2013, Council approved a development agreement with St. Xavier University for the development of a nursing school, business and education university campus in the Heritage District to be located west of the Gilbert Road and Vaughn Avenue intersection on real property owned by the Town of the Gilbert. Per the development agreement, the Town of Gilbert is required to design and construct the improvements of an 87,000 square foot, 4 story building and associated site improvements by May 2015.

Upon approval of the development agreement, and pursuant to Arizona Revised Statutes, staff began the Qualification Based Selection process for the necessary project management/construction management services for this project. On December 19th, the Town received 9 statements of qualifications and after careful consideration, three consulting firms were shortlisted and invited to interview on January 9th. Upon completion of the interviews and after the project committee deliberation, Abacus was selected as the top firm to provide architectural services for this project.

The proposed project management/construction management contract is planned to have the following project phases: Program Verification/Concept, Schematic Design, Design Development, Construction Documents, GMP/Bid, Construction Administration, Move In/Closeout and Warranty. In each phase, Abacus will provide the necessary staffing professionals to support each phase.

As part of the project management/construction management effort, the firm will provide oversight, coordination and management for pre-design phase, design, construction and post-construction phases which will include but not be limited to: independent cost analysis and management, utilities, right-of-way coordination, schedule and time management. Utilizing a PM/CM on this project will provide a more effective process in addressing impacts to the public and businesses through phasing, scheduling, traffic control, constructability and construction means and methods.

The contract was reviewed for form by Kelly Schwab, Special Counsel.

FINANCIAL IMPACT

This project is not identified in the 2013-18 CIP but has been assigned CIP Project No. RD115. Revenue bonds, which are anticipated to be sold in 2014, have been identified as the revenue source for the project.

The proposed contract amount of $741,379 for Project Management/Construction Management requires using CIP contingency for the budget appropriation and General Fund as the revenue source to cover the expenditures of this project. Once the bonds are sold, all General Fund revenue that has been advanced to the project will be reimbursed by the bonds. Saint Xavier will be making lease payments to Gilbert in an amount that is sufficient to cover the debt service requirements on these bonds.

Contract Summary

Abacus PM/CM Contract	$741,379	Approval Pending

Project Accounting Codes: rd115-7510-8002

The financial impact has been reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the fees associated with this contract and recommend approval.

Respectfully submitted,

Edgar Medina, P.E.
Assistant Town Engineer
edgar.medina@gilbertaz.gov

Attachments and Enclosures: Contract

PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT (PM/CM) SERVICES CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK (CM@R) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____ of the year 20____, by and between the Town of Gilbert, Arizona, a municipal corporation (hereinafter referred to as "GILBERT") and **Abacus,** (hereinafter referred to as the "**PM/CM**").

FOR THE PURPOSE of providing professional project management/construction management services for the Town of Gilbert on the **RD115 St. Xavier University Project**, more specifically described in Exhibit A and hereinafter referred to as the "**Project**", GILBERT and PM/CM do hereby mutually agree to the following:

1. RELATIONSHIP OF THE PARTIES

1.1 GILBERT and PM/CM

PM/CM shall act as GILBERT's fiduciary and shall furnish the services described in Exhibit A of this Contract ("Services"). PM/CM and GILBERT shall perform as stated in this Contract. PM/CM accepts the relationship of trust and confidence between it and GILBERT established by this Contract. PM/CM understands the Project is a Construction-Manager-at-Risk (CM@R) project pursuant to Arizona Revised Statutes, Title 34, Chapter 6.

1.1.1 Conflict of Interest: PM/CM agrees that its officers and employees do not now have a conflict of interest with respect to any aspect of this Contract and that PM/CM, its officers or employees will not contract for or accept employment for the performance of any work or service with any individual business, corporation or government unit that would create a conflict of interest in the performance of the Services. PM/CM further agrees that during the term of this Contract PM/CM will not enter into contracts with an architect, engineer or contractor that has a contract to perform work or services related to the Project.

1.1.2 Standard of Care: PM/CM covenants with GILBERT to furnish its best skill and its best judgment in all matters related to the Project and in all ways to further the interests of GILBERT and the Project. PM/CM's services shall be rendered in accordance with this Contract, professional standards for project managers and construction managers as adopted by the Construction Managers' Association of America (CMAA), and applicable federal, state and local laws and regulations. PM/CM shall furnish the Services in an efficient manner and shall use its best efforts to see that the Project is completed in conformity with the Contract Documents in the best and most expeditious, economical manner consistent with the interest of GILBERT.

1.1.3 PM/CM'S Project Representative: The PM/CM'S Project Representative shall be **Richard Carr.** All communications from GILBERT to PM/CM, the architect or engineering firm and the Contractor shall be directed to the Project Representative. This designation shall not be changed without GILBERT's prior approval. PM/CM

shall substitute an alternative experienced Project Representative upon GILBERT's request. PM/CM's key personnel for the Project are set forth in Exhibit B.

1.2 GILBERT and A/E

GILBERT shall enter into a separate Contract with one or more architects and/or engineers (A/E) to provide architectural and/or engineering design for the Project.

1.3 GILBERT and CM@R

GILBERT shall enter into a separate contract with a CM@R for the construction of the Project. The contract with the CM@R will require the CM@R to perform duties during the design and construction phases of the Project.

1.4 Relationship of PM/CM to Other Project Participants

In providing the Services, PM/CM shall maintain working relationships with the CM@R and A/E on behalf of GILBERT. However, nothing in this Contract shall be construed to mean that PM/CM assumes any of the responsibilities or duties of the CM@R or the A/E. The CM@R is solely responsible for construction means, methods, sequence and procedures used in the construction of the Project and for the safety of its personnel and its operations and for performing in accordance with the CM@R's contract with GILBERT. The A/E is solely responsible for the Project design and shall perform in accordance with the Contract between the A/E and GILBERT. There are no third party beneficiaries of this Contract and no one except the parties to this Contract may seek to enforce its terms.

2. PROJECT DESCRIPTION

The Project for which GILBERT has contracted the services of PM/CM is generally described as an approximately 87,000 square foot, four-story building located on Vaughn Avenue, west of Gilbert Road, and west of the anticipated Heritage District parking structure. Design of this facility may include, but is not limited to: academic space, administrative space, laboratories, parking, retail, and lease space. The facility is required to be open for Nursing School that will begin May 2015. In addition, the building will be built with sustainable building products that ultimately lower the long-term maintenance and operations of the facility.

3. PM/CM SERVICES

The PM/CM Services are set forth in Exhibit A.

4. TERM OF CONTRACT

The term of this Contract shall be from the date of Notice to Proceed issued by GILBERT to PM/CM, through Project Close-out and Warranty Inspection, as set forth in the Notice to Proceed. The term of this Contract may be extended pursuant to the provisions of Paragraph 5.

5. CHANGES TO THE SCOPE OF SERVICES

GILBERT may, at any time, and by written change order, make changes in the Services. If such changes cause an increase or decrease in the PM/CM's cost or time required for performance of the Services, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly; provided however, any claim of the PM/CM for adjustment under this paragraph must be submitted in writing within thirty (30) days from the date of receipt by the PM/CM of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by PM/CM will be allowed by GILBERT except as provided herein, nor shall PM/CM provide any services or furnish any materials not covered by this Contract unless GILBERT first approves in writing.

6. GILBERT'S RESPONSIBILITIES

6.1 GILBERT shall provide to PM/CM complete information regarding GILBERT's requirements for the Project.

6.2 GILBERT shall examine information submitted by PM/CM and shall render decisions pertaining thereto promptly.

6.3 GILBRT shall furnish legal, accounting, contract review and insurance counseling services to PM/CM as may be necessary for the Project.

6.4 If GILBERT observes or otherwise becomes aware of any fault or defect in the Project or PM/CM's services, or any nonconformity with the Contract Documents, GILBERT shall give prompt written notice thereof to PM/CM, provided however, this shall not diminish PM/CM's obligations to notify GILBERT of any such fault or defect.

6.5 GILBERT shall furnish PM/CM with a copy of its written Contract between GILBERT, A/E, and CM@R, including amendments. The services, duties and responsibilities set out in the Contract between GILBERT and the A/E shall be compatible and consistent with this Contract and the Contract Documents. GILBERT shall, in its Contracts with the A/E and CM@R, require that the A/E and CM@R perform its services in cooperation with PM/CM, consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by GILBERT and documented by PM/CM.

6.6 The terms and conditions of the Contract between (1) GILBERT and A/E and (2) GILBERT and CM@R shall not be changed without written notification by PM/CM and approval by GILBERT.

6.7 GILBERT shall cause any and all Contracts between GILBERT and the CM@R to be compatible and consistent with this Contract. Each of the Contracts shall include waiver of subrogation and shall expressly recognize PM/CM as GILBERT's representative in providing the PM/CM's Services specified in this Contract.

6.8 At the request of PM/CM, GILBERT shall furnish sufficient copies of the Contract Documents to PM/CM to permit the timely performance of Services by PM/CM.

6.9 GILBERT shall, in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction of the Project, and the use or occupancy of permanent structures or for permanent changes in existing facilities, where applicable.

6.10 GILBERT, its representatives and consultants shall communicate with the Contractor through PM/CM.

6.11 GILBERT shall send to PM/CM and shall require the A/E and CM@R to send to PM/CM, copies of all notices and communications sent to or received by GILBERT, A/E or CM@R relating to the Project. During the Construction Phase of the Project, GILBERT shall require that the A/E and CM@R submit all notices and communication relating to the Project directly to PM/CM.

6.12 GILBERT shall designate an officer, employee or other authorized representatives to act in GILBERT's behalf with respect to the Project. GILBERT's Representative for the Project is Edgar Medina. This representative shall have the authority to approve changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

7. COMPENSATION AND PAYMENT

7.1 Compensation for Services: The Basis of Compensation to PM/CM for Services rendered under this Contract is set forth in Exhibit C and as follows:

7.1.1 A fee for all approved project labor not to exceed **Seven Hundred Thirty One Thousand Nine Hundred Eighty Nine** dollars **($731,989).** The labor hours and fee breakdown is indicated in Exhibit C. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.

7.1.2 A fee for all approved project expenses not to exceed **Nine Thousand Three Hundred Ninety** dollars **($9,390).** Allowable reimbursable expenses are indicated in Exhibit C. PM/CM will not exceed the reimbursable expenses allowance of each line item without prior written authorization.

7.1.3 The total cost to GILBERT for the Services described in this Contract shall not exceed **Seven Hundred Forty One Thousand Three Hundred Seventy Nine** dollars **($741,379)** (sum of labor and expenses) without the written agreement of GILBERT.

7.2 Payment: Payment to be made by GILBERT to PM/CM for the cost of providing services will be based on monthly invoices which will set forth the hours actually worked during the

billing period. The billing rates indicated in Exhibit C will be applied against the actual hours for each position to arrive at the total fee for each month. Reimbursable expenses incurred during the billing period and during previous billing periods and not yet invoiced will be submitted for payment on the monthly invoice along with expense receipts and other acceptable back-up. All payment requests shall be certified by the PM/CM's Project Representative and shall be accompanied by a progress report indicating the work completed during the previous month(s), including the project progress to date by tasks as a percentage (%) of the total of each individual project task.

7.2.1 GILBERT shall make payment to PM/CM of one hundred percent (100%) of the approved invoiced amount within thirty (30) days of GILBERT's receipt of the invoice.

7.2.2 Payments due to PM/CM that are unpaid for more than sixty (60) days from the date of PM/CM'S invoice shall bear interest at the prevailing rate.

7.3 Accounting Records: Records of PM/CM'S personnel expense, consultant fees and direct expenses pertaining to the Project shall be maintained on the basis of generally-accepted accounting practices and shall be available for inspection by GILBERT or GILBERT's representative at mutually convenient times for a period from the date of this Contract through two years after completion of the Construction Phase Services.

8. INSURANCE REPRESENTATIONS AND REQUIREMENTS

8.1 General: Without limiting any obligations or liabilities of PM/CM, PM/CM shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this Contract at GILBERT's option.

8.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect PM/CM. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve PM/CM from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

8.3 Additional Insured: All insurance coverage and self-insured retention or deductible portions, except Workers Compensation insurance and Professional Liability insurance if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

8.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Contract is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this Contract.

8.5 Primary Insurance: PM/CM'S insurance shall be primary insurance as respects performance of subject contract and in the protection of GILBERT as an Additional Insured.

8.6 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

8.7 Waiver: All policies, including Workers' Compensation Insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representative, officials, directors, officers, and employees for any claims arising out of the work or services of PM/CM. PM/CM shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8.8 Policy Deductibles and/or Self Insured Retentions: The policies set forth in these requirements may provide coverage, which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to GILBERT. PM/CM shall be solely responsible for any such deductible or self insured retention amount. GILBERT, at its option, may require PM/CM to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

8.9 Use of Subcontractors: If any work under this Contract is subcontracted in any way, PM/CM shall execute written Contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and PM/CM. PM/CM shall be responsible for executing the Contract with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

8.10 Evidence of Insurance: Prior to commencing any work or services under this Contract, PM/CM shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by PM/CM'S Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. If a Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. Such Certificate(s) shall identify the Contract and be sent to GILBERT's Risk Manager. If any of the above cited policies expire during the life of this Contract, it shall be PM/CM'S responsibility to forward renewal Certificates within ten (10)

days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

8.10.1 GILBERT, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

A. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent
B. Auto Liability-Under ISO Form CA 20 48 or equivalent
C. Excess Liability-Follow Form to underlying insurance

8.10.2 PM/CM'S insurance shall be primary insurance as respects performance of this Contract.

8.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by PM/CM under this Contract.

8.10.4 Certificate shall cite a thirty (30) day advance notice cancellation provision. Except in the case of non-payment, which will be a 10-day advance notice.

8.10.5 Project descriptive information including:

A. St. Xavier University
B. RD115
C. 2014-2106-0152

8.11 Required Coverage:

8.11.1 Commercial General Liability: PM/CM shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate, and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.2 Professional Liability: PM/CM shall maintain Professional Liability insurance covering errors and admissions arising out of the work or services performed by PM/CM, or anyone employed by PM/CM, or anyone for whose acts, mistakes, errors and omissions PM/CM is legally liable, with an unimpaired liability insurance limit of $1,000,000 each claims and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and PM/CM shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

8.11.3 Vehicle Liability: PM/CM shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each occurrence on PM/CM'S owned, hired, and non-owned vehicles assigned to or used in the performance of the PM/CM'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Contract, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.4 Workers' Compensation Insurance: PM/CM shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of PM/CM'S employees engaged in the performance work or services under this Contract and shall also maintain Employer Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

8.12 Indemnification:

8.12.1 To the fullest extent permitted by law, PM/CM, 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 PM/CM or other persons employed or used by the PM/CM in the performance of this Agreement. PM/CM'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 PM/CM'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 PM/CM or used by PM/CM in the performance of this Agreement

8.12.2 Insurance provisions set forth in this Contract 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.

9. TERMINATION AND SUSPENSION

9.1 Termination: GILBERT may, by written notice to PM/CM, terminate this Contract in whole or in part, either for the convenience of GILBERT or because of failure of PM/CM to fulfill his contract obligations. Upon receipt of such notice, PM/CM shall (1) immediately discontinue all services affected (unless the Notice directs otherwise), and (2) deliver to GILBERT copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by GILBERT, used by GILBERT or its agents of the completed documents for the projects for which intended, or for any completed divisible part of the Project which can been deemed to stand alone (the completed divisible parts of the Project will be determined by both parties prior to at the time of termination) shall not relieve PM/CM of liability for errors and omissions. Any use of incomplete documents for this Project without the specific written authorization by PM/CM will be without liability or legal exposure to PM/CM. Any use of the aforesaid documents for other projects without the specific written authorization by PM/CM will be without liability or legal exposure to PM/CM. PM/CM shall appraise the work he has completed and submit his appraisal to GILBERT for evaluation. This Contract may be terminated in whole or in part by PM/CM in the event of substantial failure by GILBERT to fulfill its obligations.

9.2 Termination by GILBERT for Convenience: If GILBERT terminates this Contract for its convenience, GILBERT shall pay the PM/CM for the services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

9.3 Administrative Termination: Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any contract it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in the initiating, negotiating, securing, drafting or creating the contract on behalf of GILBERT is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event GILBERT looks to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to PM/CM.

9.4 Termination by GILBERT for Failure to Fulfill Obligations; Abandonment by PM/CM: If GILBERT terminates this Contract for failure of PM/CM to fulfill its obligations or if PM/CM abandons this Project without the consent of GILBERT, PM/CM shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (1) the difference between the cost of a replacement PM/CM to complete the Project and the contract price for PM/CM under this

Contract; and (2) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by GILBERT as a result of delays caused by abandonment of the Project by PM/CM. GILBERT shall use its best efforts to replace PM/CM within a reasonable time.

9.5 Suspension:

9.5.1 GILBERT may in writing order PM/CM to suspend all or any part of the PM/CM'S Services for the Project for the convenience of GILBERT or for Work stoppage beyond the control of GILBERT or PM/CM. If the performance of all or any part of the Services for the project is so suspended, an adjustment in PM/CM'S compensation shall be made for the increase, if any, in the cost of PM/CM'S performance of this Contract caused by such suspension, and this Contract shall be modified in writing accordingly.

9.5.2 In the event the PM/CM'S Services for the Project are suspended, GILBERT shall reimburse PM/CM for all of the costs of its construction staff, assigned Project home office staff and other costs as provided for by this Contract for the first thirty (30) days of such suspension. PM/CM shall reduce the size of its staff for the remainder of the suspension period as directed by GILBERT and, during such period, GILBERT shall reimburse PM/CM for all of the costs of the staff continuing their assignment to the Project. Upon cessation of the suspension, PM/CM shall restore the construction site staff and home office staff to its former size within thirty (30) days of notification from GILBERT.

9.5.3 Persons assigned to another project during such suspension periods and not available to return to the Project upon cessation of the suspension shall be replaced. GILBERT shall reimburse PM/CM for costs incurred in relocating previous staff persons returning to the Project or new persons assigned to the Project.

9.5.4 If the Project is suspended by GILBERT for more than three (3) months, PM/CM shall be paid compensation for Services performed prior to receipt of written notice from GILBERT of the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension. If the Project is resumed after being suspended for more than six (6) months, PM/CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Contract relating to termination, a suspension of the Project does not void this Contract.

9.5.5 Rain Delays: Delays resulting from non-typical weather conditions which make it unreasonable to perform the Work in accordance with the schedule. The PM/CM shall allow for no less than the number of working days to be lost due to rain delays as identified in the CMAR GMP contract. In the event that bad weather conditions are forecasted, the PM/CM shall notify the CM@R to take necessary precautions to protect the Work.

10. ADDITIONAL PROVISIONS

10.1 Confidentiality: PM/CM shall not disclose or permit the disclosure of any confidential information, except as required by Federal, State, or Local Government, as necessary to defend PM/CM from any suit or claim, or to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Contract.

10.2 Immigration Law Compliance Warranty:

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

10.2.2 If PM/CM uses any subcontractors in performance of the services, 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.

10.2.3 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. PM/CM 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. PM/CM shall not be deemed in material breach of this Contract if the PM/CM 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).

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

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

10.3 Equal Treatment of Workers: PM/CM 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 services. PM/CM 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"). PM/CM shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by PM/CM or its employees.

10.5 Limitations and Assignment:

10.5.1 GILBERT and PM/CM each binds themselves, their successors, assigns and legal representatives to the terms of this Contract.

10.5.2 Neither GILBERT nor PM/CM shall assign or transfer its interest in this Contract without the written consent of the other, except that such consent shall not be required for: (i) PM/CM to assign this Contract and all attendant rights, benefits, and obligations, to a direct or indirect parent, subsidiary, or affiliate entity, a majority of officer and/or managing employees of which are the same as for PM/CM; or (ii) PM/CM to assign accounts receivable to a commercial bank for securing loans. In the event of an assignment under (i), PM/CM shall be required to give to GILBERT notice of assignment and a certification that the assignment complies with this Section.

10.6 Governing Law: Unless otherwise provided, this Contract shall be governed by the laws of the State of Arizona where the Project is located.

10.7 Extent of Contract: This Contract represents the entire and integrated Contract between GILBERT and PM/CM and supersedes all prior negotiations, representations or Contracts, either written or oral. This Contract may be amended only by written instrument signed by both GILBERT and PM/CM. Nothing contained in this Contract is intended to benefit any third party. The CM@R and A/Es are not intended third party beneficiaries of this Contract.

10.8 Severability: If any portion of this Contract is held as a matter of law to be unenforceable, the remainder of this Contract shall be enforceable without such provisions.

10.9 Meaning of Terms: References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

10.10 Notices: All Notices required by this Contract or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Mail, first class, postage prepaid, addressed as follows:

TO GILBERT:	TO PM/CM:
Patrick Banger	Jeff Turner
Town Manager	Principal
Town of Gilbert	Abacus
50 East Civic Center Drive	3030 N. Central Ave, Ste. 1207
Gilbert, Arizona 85234	Phoenix, Az. 85012

This Contract is executed as of the day and year first written above.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Kelly Schwab, Special Counsel

ABACUS
PROJECT MANAGER/CONSTRUCTION MANAGER

_____
By: Russell Thompson
Title: Managing Principal

EXHIBIT A
PM/CM SCOPE OF WORK
FOR CONSTRUCTION MANAGER AT RISK PROJECT

A. PROJECT DESCRIPTION

The Project is generally described as follows: The facility will be an approximately 87,000 square foot, four-story building located on Vaughn Avenue, west of Gilbert Road, and west of the anticipated Heritage District parking structure. Design of this facility may include, but is not limited to: academic space, administrative space, laboratories, parking, retail, and lease space. Construction must be complete by **April 1, 2015**, since the facility is required to be open for Nursing School that will begin May 2015. In addition, the building will be built with sustainable building products that ultimately lower the long-term maintenance and operations of the facility.

B. PRE-DESIGN PHASE

1. PROJECT MANAGEMENT

1.1 Project Review: PM/CM shall meet with GILBERT's representative and other Project team members to fully understand the Project budget and scope and to refine the Project scope as needed. PM/CM shall visit the Project site and become familiar with the local conditions under which the Services and the construction work will be performed.

1.2 Project Management Plan: PM/CM shall prepare a Project Management Plan for the Project. The Plan will be prepared with the full participation of GILBERT and other Project team members. The Plan shall consider GILBERT's schedule, cost and design requirements for the Project. The Plan shall also identify utility design needs, agency approvals, possible pre-purchase of equipment and other consultants needed. PM/CM may develop various alternatives for the sequencing and management of the Project, make recommendations to GILBERT and secure approval of a project strategy prior to finalizing the Project Management Plan. The Project Management Plan shall be presented to GILBERT for review and acceptance and thereafter shall serve as a guide for the management and coordination of the Project.

1.3 A/E and CM@R Orientation: PM/CM shall conduct, or assist GILBERT in conducting, an A/E and CM@R orientation session during which the A/E and CM@R shall receive information regarding Project, schedule, costs, administrative and other Project parameters and requirements.

1.4 A/E and CM@R Contract Preparation: PM/CM shall not assist GILBERT in preparation and review of the contracts between GILBERT and A/E and between GILBERT and CM@R. PM/CM will not provide legal advice regarding the A/E and CM@R contracts and any legal counsel retained to review the A/E and CM@R contracts shall be retained and paid by GILBERT and be responsible to GILBERT. GILBERT will provide its standard form of A/E and CM@R contracts.

1.5 A/E and CM@R Contract Negotiations: PM/CM shall not assist GILBERT in negotiating the design/pre-construction contracts between GILBERT and A/E and between GILBERT and CM@R.

2. TIME MANAGEMENT

2.1 Master Schedule: PM/CM shall, after consultation with and input from the A/E and CM@R, prepare a critical path method (CPM) Master Schedule in Primavera or Microsoft Project compatible software for each component of the Project. The Master Schedule shall specify (1) proposed start and finish dates for design(s) milestones, (2) pre-construction and construction activities and (3) dates by which certain project activities must be complete. PM/CM shall submit the Master Schedule to GILBERT for review and acceptance.

2.2 Design Phase Milestone Schedule: After GILBERT accepts the Master Schedule PM/CM shall prepare the Milestone Schedule for the Design phase. The Design Phase Milestone Schedule shall be prepared in consultation with the A/E and CM@R. The Design Phase Milestone Schedule will be made part of the Agreement with the A/E and CM@R and shall be a method for judging progress during the Design Phase. The Design Phase Milestone Schedule shall include milestones for schematic design, design development and contract documents, and shall include all affected agency reviews, permitting milestones and utility relocation information. The Design Phase Milestone Schedule will take into consideration the desire of GILBERT that A/E provide complete design documents at the end of the Design Phase.

3. COST MANAGEMENT

3.1 Construction Cost Estimate: PM/CM shall prepare a Construction Cost Estimate based on information provided by GILBERT, A/E and CM@R on the work required for the Project and information developed by PM/CM as required by this contract. PM/CM shall review the estimate with GILBERT, A/E and CM@R, and PM/CM shall submit the Construction Cost Estimate to GILBERT for review and acceptance. The Construction Cost Estimate shall be revised as directed by GILBERT. No change to the scope of the Project shall be made that increases the Project costs without a corresponding change to the Project budget as approved by the GILBERT.

3.2 Cost Estimate Format: PM/CM shall establish a cost estimate format that breaks the project cost into its component parts in consultation with GILBERT, A/E and CM@R. The cost estimate format will be reviewed and updated at each design submittal stage. If the contract involves more than one CIP Project or funding source, the estimate shall also break down the information by funding source.

3.3 Cost Analysis: In an ongoing effort and mindful of the Project Master Schedule, PM/CM shall analyze and make a written report to GILBERT, A/E and CM@R the cost of various design and construction alternatives. As a part of the cost analysis, PM/CM shall consider costs related to efficiency, usable life expectancy, maintenance, energy and operation.

4. MANAGEMENT INFORMATION SYSTEM (MIS)

4.1 Establishing the Project MIS: PM/CM shall develop a MIS to govern communications between GILBERT, PM/CM, A/E, CM@R and other parties on the Project. The PM/CM shall use the GILBERT standard meeting notes forms. In developing the MIS, PM/CM shall interview GILBERT's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system. No licensing or other fees shall be charged to GILBERT for the MIS, and the MIS shall become the property of GILBERT upon completion of the Project. The PM/CM shall ensure that the GILBERT filing system and numbering system is used to keep all files, records and communications.

4.2 Design Phase Procedures: PM/CM shall prepare procedures for reporting, communications and administration during the Design Phase, for approval by GILBERT.

C. DESIGN PHASE

1. PROJECT MANAGEMENT

1.1 Revisions to the Project Management Plan: During the Design Phase PM/CM, with input from the A/E and CM@R, shall make recommendations to GILBERT regarding revisions to the Project Management Plan. Revisions approved by GILBERT shall be incorporated into the Plan by PM/CM and the Plan shall be resubmitted to GILBERT for review and acceptance.

1.2 Design Kick-Off Meeting: At the start of the Design Phase, PM/CM shall conduct a Project Conference attended by the GILBERT, A/E, CM@R and other stakeholders. During the meeting, PM/CM shall review the Scope of the Project, the Project Management plan, the Master Schedule, the proposed Design Phase Milestone Schedule, the Project and Construction Budget and the MIS.

1.3 Design Phase Information: PM/CM shall monitor the A/E's compliance with the Master Schedule, Project Management Plan, Design Phase Milestone Schedule, and Project and Construction Budget. PM/CM shall coordinate and expedite the flow of information between GILBERT, A/E, CM@R and others. If the A/E falls behind schedule, the PM/CM shall require the A/E to provide a recovery schedule.

1.4 Interface with Utility Owners: PM/CM shall be responsible for coordination of utility companies, and with A/E and CM@R assistance, development of a mitigation plan for relocation of facilities. PM/CM is responsible for ensuring special provisions are developed and a clearance/conflict letter prepared acknowledging confirmation from all utility companies. Copies of these letters shall be forwarded to GILBERT'S Representative.

1.4.1 PM/CM, with A/E assistance, shall identify all utility stakeholders that might impact this project and shall notify each of the project scope and schedule in an invitation to a utility kickoff meeting.

1.4.2 PM/CM, with A/E assistance, shall conduct a utility kickoff meeting to communicate schedule and plan details, and to discuss the expectations each stakeholder and GILBERT have of each other in order to complete the project. PM/CM shall obtain schedule information from each utility company for the design and construction of all facilities requiring relocation and shall incorporate such into the master schedule.

1.4.3 PM/CM, with A/E assistance, shall host bi-weekly utility coordination meetings to communicate and coordinate schedules and plan details, and to expedite the completion of utility plans and construction of relocations within the timeframe of the Master Schedule. These meetings may be held in combination with project progress meetings when beneficial to do so.

1.4.4 PM/CM, with assistance from A/E and the Town Engineer, shall verify that prior rights documentation submitted by the utility companies represent the utility facility and project area affected by the utility relocation.

1.4.5 At the 30% level of plan completion, the PM/CM shall forward a set of plans to each utility with facilities potentially impacted by the project.

1.4.5.1 The PM/CM shall send a transmittal letter with the 30% plans requesting each utility review the plans and attend a Utility Coordination Meeting to review the plans and discuss the utility's comments and potential conflicts.

1.4.5.2 The PM/CM will provide GILBERT and the A/E with a transmittal letter clearly showing the utility owner, mailing address, point of contact and mailing date for each utility shown on the Utility Contact List.

1.4.5.3 The PM/CM shall ensure GILBERT utilities, GILBERT Traffic Engineering, and the Town Engineer are invited to the Utility Coordination Meeting.

1.4.5.4 At the meeting the PM/CM shall review the project, discuss GILBERT'S requirement for joint utility trenches, obtain input from each utility, and obtain from A/E and review what pot-holing is needed to satisfactorily locate all utilities.

1.4.6 At the 60% level of plan completion The PM/CM shall forward a set of plans to each utility with facilities potentially impacted by the project.

1.4.6.1 The PM/CM shall send a transmittal letter with the 60% plans requesting each utility review the plans and attend a Utility Coordination Meeting to review the plans and discuss the utility's comments and potential conflicts.

1.4.6.2 The PM/CM will provide GILBERT and the A/E with a transmittal letter clearly showing the utility owner, mailing address, point of contact and mailing date for each utility shown on the Utility Contact List.

1.4.6.3 The PM/CM shall ensure GILBERT utilities, GILBERT Traffic Engineering, and the Town Engineer are invited to the meeting.

1.4.6.4 At the meeting the PM/CM will discuss changes made, new issues, and obtain comments from each utility.

1.4.6.5 ENGINEER shall make the changes and forward a corrected 60% level of completion plan set back to the PM/CM.

1.4.6.6 The PM/CM shall forward a plan set and a Request to Design letter to each utility that elects to complete their own design.

1.4.7 At the 95% level of completion, the PM/CM will forward a set of plans to each utility for final review and comments. Final construction documents shall not be approved until no conflict (clearance) letters have been received from each utility.

1.4.8 Clearance Letter: PM/CM shall prepare a utility clearance letter and submit it, together with copies of correspondence from utility companies verifying the information, to GILBERT for review and concurrence.

1.4.8.1 If there are no conflicts: The statement that there are no utilities in conflict with construction shall be used only when there are no utility facilities needing adjustment or when all adjustments have been completed prior to writing the clearance letter.

1.4.8.2 If adjustments are needed: When adjustments are required, the clearance letter shall list each utility company separately showing:

- The name of the company.
- The nature of required adjustment.
- The status of Agreements and permits.
- The status of utility adjustment

1.4.8.3 Show the status of utility adjustment as:

- Completed
- To be performed by CM@R as part of the project.
- To be performed by utility company during construction, with estimated completion date or number of working days.
- In progress, with estimated completion date.
- To be performed by utility company prior to construction.

1.4.9 PM/CM shall coordinate the relocation of utilities, whether performed by utility company or CM@R. This coordination shall include monitoring the relocation schedule and requiring the utility company or CM@R to provide a recovery schedule if the work falls behind the originally planned schedule.

1.4.10 When a property is acquired in total for the project, any utility issues are resolved as part of the right-of-way acquisition. When there is only a partial take of property for project purposes, PM/CM shall ensure utility adjustments identified as

a result of the partial acquisition are incorporated into the construction documents by the A/E.

1.5 Right of Way Acquisition: PM/CM shall work closely with GILBERT staff and consultants that are obtaining the rights of way necessary for the project. PM/CM shall track the progress of right-of-way and easement acquisitions required for the project. PM/CM shall conduct meetings as necessary to assure communication between the A/E, the appraiser and the ROW agents regarding project limits, construction space requirements and temporary easements. PM/CM will coordinate with party(s) responsible for the acquisitions and report to GILBERT potential schedule delays that may arise from the acquisition activity. PM/CM shall keep GILBERT informed of potential right of way impediments to the project schedule. All right-of-way requirements, including legal descriptions and exhibits, will be developed by the A/E and submitted to PM/CM. Prior to the A/E's development of the legal descriptions and exhibits, PM/CM shall conduct an on-site meeting with GILBERT, A/E, ROW Agent, Appraiser and CM@R to review the sites needed and to determine what will be included in the appraisal. PM/CM will work with GILBERT'S appraiser and ROW agents to obtain and clear all right-of-way required for the project. PM/CM shall prepare and submit a clearance letter to GILBERT stating that all necessary ROW has been acquired.

1.6 Project Meetings: PM/CM shall conduct weekly Project meetings attended by GILBERT, A/E, CM@R and others. Such meetings shall serve as a forum for the exchange of information concerning the Project, review of design progress, and discussion of any proposed changes in the scope of the Project. PM/CM shall prepare and distribute minutes of these meetings to GILBERT, A/E, CM@R and others, as agreed to by GILBERT. No change in the scope of the Project that increases the cost of the Project shall be made without a corresponding change to the Project budget as approved by GILBERT.

1.7 Review of Design Documents and Design Recommendations

1.7.1 PM/CM shall review the design drawings and technical specifications (Design Documents), prepared by A/E for compliance with (1) Town of Gilbert Standard Details and Specifications, (2) MAG Standard Details, Current Edition, (3) MAG Standard Specifications, Current Edition, (4) Manual on Uniform Traffic Control Devices, 1988 Edition, (5) Heritage District Redevelopment Plan (if the Project is located in the Heritage District), (6) GILBERT's Building and Construction Codes, (7) East Valley Asphalt Committee Mix Design Standards, and (8) other local, state, and federal requirements applicable to the Project. The results of the review shall be provided to GILBERT in writing and as notations on the documents.

1.7.2 PM/CM shall review the design documents for clarity, consistency, constructability and coordination. As part of this review PM/CM shall prepare a plan for construction sequencing that will result in maintaining traffic flow and business and residential access throughout the duration of the construction phase. The results of the review shall be provided to GILBERT in writing and as notations on the documents.

1.7.3 PM/CM shall make written recommendations to GILBERT with respect to constructability, construction cost, sequence of construction, construction duration and separation of the contract into categories of the work.

1.7.4 PM/CM is not responsible for providing, nor does PM/CM control, the Project design or the contents of the design documents; however, PM/CM shall notify GILBERT if the design or other documents prepared by A/E may result in costs exceeding the Project budget, may depart from accepted architectural or engineering standards, may fail to comply with applicable laws, or may result in delays in the Project schedule. By performing the reviews described herein, PM/CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or contract documents. However, PM/CM'S actions shall comply with the fiduciary and professional standards set forth in Paragraph 1 of this Agreement. The A/E is not a third party beneficiary of PM/CM'S work described in this paragraph and the A/E remains solely responsible for the contents of design drawings and contract documents; however, PM/CM remains solely responsible for establishing the overall Project costs and schedule.

1.8 GILBERT'S Design Reviews: PM/CM shall be proactive in expediting GILBERT'S design reviews. PM/CM shall track and report to GILBERT's Program Manager on submittal dates, distribution of submittal items, return of comments to A/E, and resolution of review comments.

1.9 Approvals by Outside Agencies and Utility Companies

1.9.1 The Project Management Plan shall identify all outside agency and utility reviews and approvals required on the Project. PM/CM shall track the transmittal of documents to outside agencies and utilities for review, and shall report to GILBERT of potential problems or delays in completion of such reviews, and obtaining final approvals.

1.9.2 PM/CM shall prepare and provide GILBERT with a list of all permits and approvals required for the project and the responsible party for obtaining each permit or approval. PM/CM shall be responsible for coordinating the permit and approval process and tracking all required permits/approvals to ensure they are obtained.

1.10 General Conditions: PM/CM shall review and coordinate the General Conditions and other front end documents with the design documents as prepared by the A/E. GILBERT shall provide PM/CM with its standard general conditions.

1.11 Project Funding: PM/CM shall prepare documents concerning the Construction Budget for use in obtaining or reporting on project funding. The documents shall be prepared on forms approved by GILBERT.

1.12 Public Participation Meetings: PM/CM will attend a number of meetings planned for public involvement in CIP projects, which will be scheduled at the onset of the project, as determined by GILBERT. Typically a project will provide for up to three (3) such meetings,

occurring after the review of the 30% plans, at the 95% submittal, and approximately 2 weeks prior to the start of construction.

1.13 Special Provisions: PM/CM, in consultation with A/E and CM@R shall prepare Special Conditions for items, details, and procedures not adequately covered by Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction, Town of Gilbert Supplements, Maricopa County Department of Transportation Supplements and other specifications identified by GILBERT.

2. TIME MANAGEMENT

2.1 Prepare Master Schedule: PM/CM shall, after consultation with the A/E and CM@R, prepare a resource loaded Master Schedule in Primavera compatible software for each component of the project. The Master Schedule shall specify (1) proposed start and finish date for the pre-design phase and design phase milestone submittals, (2) proposed start and finish dates for pre-construction and construction phase activities, and (3) dates by which certain project activities such as advance ordering of long-lead items must be completed. PM/CM shall submit the Master Schedule to GILBERT for review and approval.

2.2 Monitoring the Design Phase Milestone Schedule: While performing the services provided elsewhere in this agreement, PM/CM shall track the Design Phase Milestone Schedule. In the event that A/E's schedule begins to fall behind scheduled milestone dates, PM/CM shall work with A/E on remedial/corrective actions necessary to recover. Should A/E fail to meet future Design Phase Milestones in a manner that would affect the overall Master Schedule, PM/CM shall report to GILBERT, and make recommendations with respect to such remedial/corrective actions necessary to achieve a recovery schedule.

3. COST MANAGEMENT

3.1 Project and Construction Budget Revisions: PM/CM shall make written recommendations to GILBERT on the impact of design changes that may result in revisions to the Project and Construction Budgets, Master Schedule and Project Management Plan.

3.2 Cost Control and Estimating: PM/CM shall immediately notify GILBERT in writing if he has reason to believe the A/E will exceed the A/E contract fee set forth in the contract between the A/E and GILBERT. PM/CM shall immediately notify GILBERT in writing if he has reason to believe the CM@R will exceed the CM@R contract fee set forth in the Pre-Construction Contract between the CM@R and GILBERT. PM/CM shall review estimates of the construction costs for each submittal of design drawings and specifications from the A/E. The review comments for each submittal shall be accompanied by a written report to GILBERT and A/E identifying variances from the Construction Budget. PM/CM shall coordinate and assist in expediting the activities of GILBERT and A/E when design changes are required in order to remain within the Construction Budget.

3.3 Value Analysis: PM/CM shall review any value analysis proposed by GILBERT, A/E, CM@R and/or other stakeholder. The value analysis shall include best value recommendations, offer cost savings suggestions on design and construction materials

alternatives, and consider constructability issues. PM/CM acknowledges that GILBERT desires A/E to provide timely and complete design documents at the end of the design phase. To this end, PM/CM shall be expeditious in conducting and reporting on its value analysis.

3.4 Subcontractor Bidding: PM/CM will be actively involved in the CM@R subcontractor bidding activities. This will include review of qualified subcontractors, attendance at subcontractor pre-bid meetings, review of sub-bid tabulation forms and holding a subcontractor pre-award meeting.

4. MANAGEMENT INFORMATION SYSTEMS (MIS)

4.1 Schedule Reports: In conjunction with the services provided elsewhere in this agreement, PM/CM shall prepare and distribute Schedule Update Reports that shall compare actual progress with scheduled progress for the Design Phase and the overall Project.

4.2 Project Cost Reports: PM/CM shall prepare and distribute Project Cost Reports that shall indicate estimated costs compared to the Project and Construction Budgets.

4.3 Design Phase Change Order Report: PM/CM shall prepare and distribute monthly Design Phase Change Order Reports, if there are design changes, that shall list all GILBERT-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budgets and the Master Schedule.

4.4 Construction Phase Procedures: PM/CM shall prepare advanced procedures for reporting, communications and administration during the Construction Phase for approval by GILBERT.

D. OTHER PRE-CONSTRUCTION ACTIVITIES; CM@R CONSTRUCTION PHASE SERVICES CONTRACT AND GUARANTEED MAXIMUM PRICE (GMP); COMPETITIVE BIDDING AND SUB-BIDS.

1. NEGOTIATION OF CM@R CONSTRUCTION PHASE CONTRACT AND GMP

1.1 Review of Cost Estimates and Schedule of Values: Prior to beginning negotiations with CM@R for a GMP, PM/CM shall review the cost estimates and schedule of values and other information prepared by CM@R pursuant to the Pre-Construction Contract between GILBERT and CM@R. PM/CM shall submit its written recommendations to GILBERT regarding those documents and information.

1.2 GMP Proposal: PM/CM shall review the GMP proposal submitted by CM@R. PM/CM and return the GMP Proposal to CM@R to make adjustments as necessary to the GMP Proposal required by such inconsistencies or inaccuracies.

1.3 Independent Estimate; negotiation of GMP: PM/CM shall prepare an independent estimate of the cost of the construction work of the Project and submit it to GILBERT, A/E and CM@R. If the GMP proposal exceeds the independent estimate, PM/CM shall request a revised GMP Proposal. Upon receipt of the revised GMP Proposal, or if no revised GMP

Proposal is received, PM/CM shall make a written recommendation to GILBERT as to whether the GILBERT should accept the CM@R'S original or revised GMP Proposal or reject the original or revised GMP Proposal.

2. COMPETITIVE BIDDING AND SUB-BIDS

PM/CM shall oversee the solicitation and receipt of sub-bids pursuant to the Contract for Pre-Construction Services between GILBERT and CM@R. PM/CM shall make written recommendations to GILBERT regarding such sub-bids.

3. OTHER PRE-CONSTRUCTION ACTIVITIES

3.1 Pre-Construction Conference: In consultation with GILBERT, A/E, and CM@R, PM/CM shall conduct a Pre-Construction Conference during which PM/CM shall review the Project organization, communication protocols, security, responsibilities and other general project procedures and other matters related to the Project.

3.2 Permits, Insurance and Labor Affidavits: PM/CM shall verify that CM@R has secured the building permits, bonds, insurance, labor affidavits and waivers as required by the Contract Documents. Such action by PM/CM shall not relieve the CM@R of his responsibilities to comply with the provisions of the Contract Documents.

E. CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

1.1 On-Site Management and Construction Phase Communication Procedures: PM/CM shall provide and maintain a management team on the Project site to provide construction/contract administration, to be GILBERT's representative, and to establish and implement coordination and communication procedures among PM/CM, GILBERT, A/E and CM@R. Construction observations for the Project shall be performed by personnel of PM/CM with sufficient expertise to determine whether the construction is proceeding in accordance with the Construction Contract Documents. Construction observation shall be under the direct supervision of an engineer(s) registered in the State of Arizona and qualified to perform this work. PM/CM shall comply with and have sufficient trained personnel to meet the schedule and man-hour requirements set forth in Exhibit C.

1.2 Construction Administration Procedures: PM/CM, with input from A/E, shall establish and implement procedures for expediting and processing requests for information (RFI's); review and approval of shop drawings, material and equipment sample submittals, contract schedule adjustments; change orders; material and equipment substitution requests; and payment requests. PM/CM shall establish and maintain logs for tracking all relevant information related to the above. PM/CM shall maintain daily job reports. As GILBERT's representative at the construction site, PM/CM shall be the party to whom requests for information, submittals, CM@R schedule adjustments, substitution requests, change order requests and payment applications shall be submitted, processed, approved, and returned to CM@R.

1.3 Construction Observation: PM/CM shall establish and implement a program to observe and monitor the quality of the construction. The purpose of the program shall be to identify defects and deficiency in the work of the CM@R. While PM/CM shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the CM@R in the performance of its contract, PM/CM shall nevertheless advise GILBERT whether the construction means, methods, techniques, sequences or procedures will delay the work or cause a defect in the work. PM/CM may from time to time, issue work directives, or field orders, which consist of minor changes in the work not involving an adjustment in the GMP or the Contract Time, but consistent with the overall intent of the Contract Documents. PM/CM is authorized to reject work and transmit to GILBERT and CM@R a notice of nonconforming work when the Work does not conform to the requirements of the Contract for Documents. PM/CM is not authorized as a part of this service to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. In the event the CM@R fails to correct deficient work, PM/CM shall issue a stop work order on behalf of GILBERT until such deficiencies are corrected. No action taken by PM/CM shall relieve the CM@R from his obligation to perform his work in strict conformity with the Contract Documents and in strict conformity with all applicable laws, rules and regulations.

1.4 Design Changes: Any decision or action related to the design or engineering of the Project shall be referred to the A/E for action. No change in the design documents shall be made without written approval of the A/E.

1.5 Project Site Meetings: PM/CM shall conduct periodic coordination meetings at the Project site with the CM@R, GILBERT, A/E (if provided for in the Agreement between GILBERT and the A/E) and/or other stakeholders as needed. PM/CM shall record, transcribe and distribute minutes to all attendees, GILBERT, A/E and CM@R.

1.6 Construction Quality Assurance (Inspections and Testing): Technical or special inspections required in the Contract Documents per IBC, and testing provided by the A/E or others shall be directed, scheduled, and monitored by PM/CM. PM/CM shall be provided a copy of all inspection and testing reports on the day of the inspection or test or within a reasonable time period. PM/CM is responsible for providing the test results to CM@R, A/E and GILBERT. In the event of a failed test, re-testing will be performed as directed in the Contract Documents. In conjunction with this contract section, the PM/CM will provide special inspection for the following Special Structural Inspection (SSI):

1.6.1 Structural Steel (if applicable)
1.6.2 Welding Inspection (if applicable)
1.6.3 Post Tension Concrete (if applicable)
1.6.4 Post Tension Concrete Slabs (if applicable)
1.6.5 Post Tension Concrete Girders (if applicable)

1.7 Review of Requests for Changes to the Contract Time and GMP: PM/CM shall review with A/E the contents of requests for changes to the contract work, time or GMP submitted by CM@R, assemble information concerning the request to determine the cause of the requests

and make written recommendations to GILBERT with respect to acceptance of the requests. Any change affecting the design must first be approved by A/E. PM/CM will implement GILBERT's decisions regarding all requests for changes. All changes to the Contract Documents between GILBERT and CM@R shall be only by change orders executed by GILBERT.

1.8 Record Drawings, Operation and Maintenance Materials: As required by the Contract Documents, PM/CM shall receive from the CM@R red-line construction record drawings, operation and maintenance manuals, warranties and guarantees for materials and equipment installed on the Project, and review such documents for completeness and submit documents to GILBERT. Upon verification of the red-line construction record drawings for correctness, PM/CM shall transmit same to the A/E for preparation of the as-built drawings. Upon return of the as-built drawings to the PM/CM from the A/E, PM/CM'S engineer shall be the responsible engineer(s) for purposes of certifying the as-built drawings. "Certify the as-built drawings" means the as-built drawings will be signed, sealed and dated by engineer(s) registered in the State of Arizona in his field of competence. Each plan sheet in the set shall be marked "As-Built". In addition, if the Project requires certification by Maricopa County Environmental Services Department or the Arizona Department of Environmental Quality, PM/CM shall obtain such certification.

1.9 Substantial and Final Completion: In consultation with the A/E and GILBERT's inspectors (when applicable), PM/CM shall review the CM@R'S written request for substantial completion and final completion and recommend to GILBERT when the Project and the CM@R'S Work has achieved substantial and final completion as defined in the CM@R contract. PM/CM shall, prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work or work that does not conform to the Contract Documents (punch-list items) based on his observations and input from the A/E and GILBERT's inspectors (when applicable). This list shall be attached to the Certificate of Substantial Completion. The Certificate of Final Completion shall not be issued until the incomplete work has been completed and GILBERT is ready to accept the Project. PM/CM shall issue the Certificate of Substantial Completion and Certification of Final Completion to the CM@R.

1.10 Project Close-out

1.10.1 Within five (5) days of the receipt of CM@R'S written request for a punch list, PM/CM shall make a punch list inspection or inform CM@R that the work is not ready for punch list inspection. Upon completion of the deficient work, CM@R may again request a punch list inspection.

1.10.2 PM/CM shall notify CM@R in writing of any deficiencies to be remedied prior to final acceptance by written punch-list. Final acceptance shall not be given until the punch-list items are completed in accordance with the Contract Documents. No one is authorized to amend the Contract Documents by use of the punch list, which is solely for the benefit of CM@R to enable him to determine what items must be corrected before final acceptance will be recommended by the PM/CM.

1.10.3 After all work has been completed, as determined by PM/CM, PM/CM shall recommend in writing to GILBERT that final acceptance of the entire work be made as of the date of PM/CM'S final inspection.

1.10.4 Simultaneously with CM@R'S request for final payment, CM@R is required to submit the following items to PM/CM: (1) red-line construction record drawings; (2) warranties; (3) three sets of documentation covering the operation and maintenance of the mechanical and electrical installation and all other equipment required to be furnished with such manuals; (4) other items required by the Special Conditions. No recommendation shall be made for final acceptance until these items have been received and are complete.

1.11 Final Payment: PM/CM shall provide to GILBERT a written recommendation regarding final payment to the CM@R. A final change order, if applicable, shall be prepared by the CM@R, reviewed and approved by the PM/CM, with a recommendation for approval by GILBERT. PM/CM'S recommendation for final payment shall take into account the GMP, as adjusted by any change orders, amounts already paid, and sums to be retained for incomplete work, liquidated damages, and for any other cause under the Contract Documents. PM/CM shall prepare a written statement of final inspection, stating that the work has been given a final inspection, that CM@R has submitted the required documents, setting forth with detail any deviations in the work as completed, and estimating the cost of correction of such deviations. PM/CM'S statement shall be transmitted to GILBERT along with CM@R request for final payment. PM/CM shall provide a copy of the statement of final inspection and PM/CM'S estimate of the sum due to CM@R.

2. TIME MANAGEMENT

2.1 Master Schedule: PM/CM shall adjust and update the resource loaded Master Schedule and distribute copies to GILBERT and A/E. Recommendations for adjustments to the Master Schedule shall be made to GILBERT, and upon GILBERT's approval shall be incorporated by PM/CM.

2.2 Contractor's Construction Schedule: PM/CM shall review the CM@R'S resource loaded Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Contract Documents. If changes in the Master Schedule maintained by PM/CM are appropriate, PM/CM shall make such modifications as approved by GILBERT.

2.3 Construction Schedule Reports: PM/CM shall, on a monthly basis and at the time of CM@R'S pay application, review the progress of construction, shall evaluate the percentage complete of each construction activity as indicated in the CM@R'S resource loaded Construction Schedule and shall review such percentages with the CM@R. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to GILBERT. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the CM@R. PM/CM shall advise and make recommendations to GILBERT concerning the

alternative courses of action that GILBERT may take in its efforts to achieve contract compliance by the CM@R.

2.4 PM/CM Review of Time Extension Requests: Prior to the issuance of change orders, PM/CM shall advise GILBERT as to the effect CM@R'S requests for time extensions will have on the Master Schedule.

2.5 Recovery Schedules: Where Construction Schedule delays are encountered, PM/CM shall request a recovery schedule in writing from the CM@R and review the recovery schedule for compliance with the Contract Documents. Any delays that may affect the Master Schedule shall be reported to GILBERT in writing.

3. COST MANAGEMENT

3.1 Schedule of Values: The CM@R'S Construction Schedule shall have the total contract price allocated among the CM@R'S scheduled activities, by project number when more than one project is involved in the contract, so that each of the CM@R'S activities shall be allocated a price and the sum of the prices of the activities, all equal to the total contract price ("Schedule of Values"). In a unit price contract with lump sum items, a schedule of values shall be provided for all major lump sum items. Procurement of long lead items shall be identified. PM/CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the CM@R shall be based on the CM@R'S percentage of completion of the scheduled activities as set out in the Construction Schedule Reports and the CM@R compliance in accordance with the Contract Documents.

3.2 Change Order Control: PM/CM, with input from A/E, shall establish and implement a change order control system. All proposed change orders shall first be described in detail by PM/CM, with the assistance of the A/E when necessary, in a request for a proposal to the Contractor, and shall be accompanied by technical drawings and specifications prepared by the A/E, when required. In response to the request for a proposal, the CM@R shall submit to PM/CM for evaluation detailed information concerning the cost and time adjustments, if any, as may be necessary to perform the proposed change work order. PM/CM shall discuss the proposed change order with the CM@R and determine the CM@R basis of the cost and time impacts of performing the work. PM/CM shall make recommendations to GILBERT on acceptability of the change in the work, prior to GILBERT's execution of change orders. PM/CM shall verify that change order work and adjustments of time, if any, required by approved change orders have been incorporated into the CM@R'S Construction Schedule, the Master Schedule, and the Construction Budget. No change in the design shall be made without written approval of the A/E.

3.3 Change Order Pricing and Verification: If a Change Order provides for an adjustment to the GMP, the cost of the change in the work shall be made as prescribed in the Contract Documents.

3.3.1 Where a unit price is contained in the GMP, or when a unit price or lump sum is mutually agreed upon for the change in the work, the PM/CM shall make a

recommendation to GILBERT and CM@R shall execute a Change Order, prior to proceeding with the change in the work, unless an emergency situation exists.

3.3.2 Where a change in work is to be performed on a Cost Plus basis, an estimate of the work shall be prepared by the CM@R and reviewed by PM/CM. With GILBERT approval, and based on recommendation from PM/CM, PM/CM'S Project Representative shall provide written direction to the CM@R to proceed with the change in the work.

3.3.3 In addition to receiving the required information from the CM@R documenting time, materials, equipment, and sub-contractors employed to complete the change of work, PM/CM shall personally monitor and record work effort involved in the change of work. PM/CM and CM@R shall confer on a daily basis, and come to a mutual agreement on the time, materials, equipment, and sub- contractors cost that day. As stipulated in the Contract Documents, final cost of the change in the work shall be reflected and formalized in a Change Order, signed by both GILBERT and CM@R.

3.3.4 Should negotiations break down between PM/CM and CM@R over the cost of the change in the work, PM/CM, with GILBERT approval, shall be authorized to seek bids and have the work performed by another contractor.

3.4 Progress Payments: PM/CM shall review the payment applications submitted by the CM@R and determine whether the amount requested reflects the progress of the CM@R's work. PM/CM shall make appropriate adjustments to each payment application and shall provide and forward to GILBERT a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period by project number for each project included within the contract. Included in this report shall be a Certificate of Payment that shall be signed by PM/CM and delivered to GILBERT. The issuance of a Certificate of Payment by PM/CM shall constitute a representation by PM/CM to GILBERT, based on PM/CM'S observations and inspections at the site and on the data comprising the CM@R'S application for payment, that the work has progressed to the point indicated; that, to the best of PM/CM'S knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, and to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the application for payment; that red-line construction record drawings are up to date; and that the CM@R is entitled to payment in the amount certified.

4. MANAGEMENT INFORMATION SYSTEM (MIS)

4.1 Schedule Update Reports: PM/CM shall prepare and distribute Schedule Update Reports during the Construction Phase no less frequently than monthly. The Reports shall compare the actual construction dates to scheduled construction dates for each work item, milestone dates (if any), and to the Master Schedule for the Project.

4.2 Project Cost Reports: PM/CM shall prepare and distribute Project Cost Reports during the Construction Phase. The Reports shall specify actual Project and construction costs compared to GILBERT-approved Project and Construction Budgets.

4.3 Project and Construction Budget Revisions: PM/CM shall make recommendations to GILBERT on the impact of construction changes that may result in revisions to the Project and Construction Budgets.

4.4 Cash Flow Reports: PM/CM shall prepare and distribute Cash Flow Reports in a format provided by GILBERT on a monthly basis during the Design and Construction Phases. The Reports shall specify actual cash flow as compared to projected cash flow for the PM/CM, the A/E and the CM@R. The projected cash flow data shall not be changed during the project without written approval from GILBERT. If more than one CIP Project is included in the Work under this contract, a separate cash flow report shall be prepared for each project.

4.5 Progress Payment Reports: PM/CM shall prepare and distribute the Progress Payment Reports to GILBERT. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period by project number for each project included within the contract. A portion of this Report shall be a Certificate of Payment that shall be signed by PM/CM, and delivered to GILBERT for use by GILBERT in making payments to the CM@R.

4.6 Change Order Reports: PM/CM shall periodically prepare and distribute Change Order Reports during the Construction Phase. The Report shall list all GILBERT-approved change orders by number, a brief description of the change order Work, the cost established in the change order time impacts, if any, and percent of completion of the change order work.

4.7 CM@R'S Safety Program Report: PM/CM shall verify that a copy of CM@R'S safety program is available at the job site, as required in the Contract Documents, and shall include a copy of the CM@R'S weekly safety meeting agenda as an attachment to the weekly construction meeting minutes. PM/CM shall not be responsible for or have any liability in whole or in part for CM@R implementation of or compliance with CM@R safety programs and safety laws, regulations, etc., nor shall PM/CM be responsible for the adequacy, or completeness, of CM@R Safety Programs or the CM@R'S compliance and performance thereof. PM/CM has no responsibility for review of safety programs; however, if PM/CM observes a violation of the CM@R'S safety program or witnesses any potentially unsafe condition, he shall immediately notify the CM@R and GILBERT's Representative of the potential violation/condition and if the violation/condition is not immediately cured, the PM/CM shall issue a stop work order until the violation/condition is cured.

F. POST-CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

1.1 Record Documents: PM/CM shall coordinate and expedite submittals of information from the CM@R for preparation of as-built drawings and specifications and shall coordinate and

expedite the transmittal of as-built documents to GILBERT. PM/CM shall certify the as-built drawings as required under this agreement.

1.2 Organize and Index Operation Maintenance Materials: Prior to the Final Completion of the Project, PM/CM shall compile and verify completeness of manufacturers' operations and maintenance manuals, warranties and guarantees as received from the CM@R, and submit such documents to GILBERT.

1.3 Occupancy Permits and Final Approvals: PM/CM shall assist GILBERT in obtaining an Occupancy Permit and/or Final Approvals by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

1.4 Warranty Inspection: PM/CM shall notify GILBERT Program Manager and Operations Staff and jointly perform a warranty inspection ten (10) months after final acceptance.

2. COST MANAGEMENT

Change Orders: PM/CM shall continue to provide services related to Change Orders, as required, during the Post-Construction Phase.

3. MANAGEMENT INFORMATION SYSTEMS (MIS)

3.1 Close-out Reports: At the conclusion of the Project, PM/CM shall prepare final Project Cost and close-out reports. All of the information contained in the MIS shall be delivered to GILBERT upon completion of the Project. Following is a list of items to be included with the close-out package:

3.1.1 Copy of Certificate of Substantial Completion with a copy of the punch list itemizing incomplete or deficient items.

3.1.2 Copy of Certificate of Final Completion.

3.1.3 Copy of final change order, if required, prior to submitting final pay applications.

3.1.4 Final pay application with Affidavit for the Settlement of Claims, Record Drawings, Warranties, Operations and Maintenance Manuals and other items as required by the special conditions and/or contract documents.

3.1.5 8½" x 11" drawings showing the actual locations of landscape controllers and electric services, if applicable.

3.2 Close-out Meeting: At the conclusion of the Project, PM/CM shall participate in a Project close-out meeting with GILBERT staff, A/E and CM@R to evaluate the process used on the Project and the results obtained and to discuss how the process might be improved for the next project. PM/CM shall provide meeting minutes from close-out meeting.

EXHIBIT B
PM/CM'S PROJECT MANAGEMENT KEY PERSONNEL

Principal in Charge: Jeff Turner

Project/Construction Manager: Richard Carr

Others:

EXHIBIT C
FEE AND REIMBURSABLE COSTS

EXHIBIT C

Town of Gilbert - Saint Xavier University (Proj. No. RD115)

ABACUS PM

Fee Proposal for PM/CM Services (Contract No. 2014-2106-0152)

January 16, 2014

	Date	Phase I (Shell & Nursing)	Phase II (3rd Floor Build-out)	Principal (Jeff)	Project Director (Adam)	Resident Sr. Proj Mgr (Rick)	Sr. Cost Est. (Larry B.)	MPE Estimator (LJ Morrow)	Admin. Support (Ruth)	Total Proposed Hours Per Month	Total Labor Fee Per Month
	Jan 2014	Selection of PM, AE, CMAR		0	0	0	0	0	0	0	$0
1	Feb 2014	Design Phase		72	64	173	24	8	4	345	$52,093
2	Mar 2014	Design Phase		32	32	173	24	8	4	273	$40,293
3	Apr 2014	Design Phase		32	32	173	24	8	4	273	$40,293
4	May 2014	Design Phase / Early Scope GMP / Sell Bonds		16	16	173	48	8	4	265	$38,573
5	Jun 2014	Design Phase / Order Long Lead		12	12	173	24	8	4	233	$33,793
6	Jul 2014	Design / Bidding / Permitting		8	8	173	24	8	4	225	$32,493
7	Aug 2014	Bidding / Final GMP / Construction		8	8	173	80	40	4	313	$44,933
8	Sep 2014	Construction Phase		4	4	173	4	0	4	189	$27,213
9	Oct 2014	Construction Phase		4	4	173	4	0	4	189	$27,213
10	Nov 2014	Construction Phase		4	4	173	4	0	4	189	$27,213
11	Dec 2014	Construction Phase		4	4	173	4	0	4	189	$27,213
12	Jan 2015	Construction Phase		4	4	173	4	0	4	189	$28,146
13	Feb 2015	Construction Phase		4	4	173	4	0	4	189	$28,146
14	Mar 2015	Construction Phase	[Business & General Education Programs]	4	40	173	4	0	4	225	$33,726
15	Apr 2015	Construction Phase / Nursing Move-in & Fit-up	Construction (3rd Floor Buildout)	4	48	173	0	0	4	229	$34,366
16	May 2015	Classes Start / Closeout / Warranty Support	Construction (3rd Floor Buildout)	4	4	173	0	0	4	185	$27,546
17	Jun 2015	Closeout / Warranty Support	Construction (3rd Floor Buildout)	4	4	173	0	0	4	185	$27,546
18	Jul 2015	Warranty Support	Construction Phase / Move-in & Fit-up	0	4	173	0	0	4	181	$26,826
19	Aug 2015	Warranty Support	Classes Start / Closeout / Warranty Support	0	0	173	0	0	0	173	$25,950
20	Sep 2015	Warranty Support	Closeout / Warranty Support	0	0	173	0	0	0	173	$25,950
21	Oct 2015	Warranty Support	Warranty Support	0	0	86	0	0	0	86	$12,900
22	Nov 2015	Warranty Support	Warranty Support	0	0	50	0	0	0	50	$7,500
23	Dec 2015	Warranty Support	Warranty Support	0	0	50	0	0	0	50	$7,500
24	Jan 2016	Warranty (10th month walk)	Warranty	0	0	60	0	0	4	64	$9,564
25	Total Hourly Rate (2014)			$175.00	$150.00	$145.00	$145.00	$135.00	$62.00		
26	Total Hourly Rate (2015)			$180.00	$155.00	$150.00	$150.00	$139.00	$64.00		
27	Total Hourly Rate (2016)			$185.00	$160.00	$155.00	$155.00	$143.00	$66.00		
28	Grand Total (Labor only)			$38,620	$44,940	$546,685	$40,080	$11,880	$4,784		$686,989

29	Reimbursable Expenses (Note 1)							
30	- Mileage	24	mos x	500	miles/mo x	$0.57	per mile =	$6,840
31	- Office Supplies / Printing / Communication	17	mos x	150	per month		=	$2,550
32	- Allowance for Addtnl Services, if requested by the Town of Gilbert	Allowance						$25,000
33	- Special Inspections (Allowance for Structural only) - see Note 2	Allowance						$20,000
34	Grand Total (Labor and Reimbursables)							$741,379
							Fee is	3.4%
							of a Project Value of	$22,000,000

Note 1 - Our fee is based upon our Field Office to be provided by the Town of Gilbert during the Pre-Construction Phase and our field office during the Construction the Construction Phase will be provided by the CMAR. This would include; office, desk, chair, file, phone service, copier, fax, utilities, etc.

Note 2 - Materials Testing and Inspections will be handled under the CMAR's contract and are not included in the Abacus contract. Geotech will be under the A/E's Agreement.

EXHIBIT D
CHANGE ORDER NO. _____
(PM/CM)

PROJECT:	St. Xavier University
DATE:	
OWNER:	Town of Gilbert
PROJECT NO:	RD115
CONTRACT NO:	2014-2106-0152
CONTRACT DATED:	
PM/CM:	Abacus

CHANGES: The CONTRACT is changed as follows: (Insert brief description)

_____

_____

_____

COST/TIME: Original CONTRACT SUM:	$_____
Previously Authorized CHANGE ORDERS:	$_____
CONTRACT sum prior to this CHANGE ORDER:	$_____
CHANGE ORDER # Amount:	$_____
New CONTRACT SUM:	**$_____**

CONTRACT TIME will be increased by:

SUBSTANTIAL COMPLETION as of this Change Order:

Approved/Accepted by:

A/E _____
(Name) (Date)

PM/CM _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

Not valid until signed by GILBERT and/or PM/CM. Signature of PM/CM indicates acceptance, including CONTRACT SUM and CONTRACT TIME.