TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS

For

Project Name: Spring Meadows Shade Structure
Contract No: 2014-8003-0263
Date: March 27, 2014

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours

following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on April 9, 2014 at 2:30 p.m. in Room 300, Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to the GILBERT at the end of

the project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.1.11 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope, which shall be marked as indicated in the Notice and Call for Bids. It is the <u>sole</u> responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations

of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms

B. Bid Bond

C. No Collusion Affidavit

D. Authorized Signature Form

E. Bidder's Questionnaire

F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for 90 days following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least ten percent (10%) of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town of Gilbert Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to Brian Border via email (Brian.Border@gilbertaz.gov) a written request for an interpretation or correction thereof. The request must be made via email and delivered to Brian Border **by 6:00 pm on April 14, 2014**. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be posted on the Town of Gilbert website. CONTRACTOR is responsible for acknowledging all ADDENDA in his bid. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to ENGINEER at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. ENGINEER will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a subproposal or quoting prices to other BIDDERS, but must quote the same subproposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and

shall furnish the required bonds within ten (10) days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within 40 consecutive working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within 30 working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within 40 working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and

equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 ENGINEER

1.17.1 This PROJECT will be coordinated by an ENGINEER, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, ENGINEER will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (4) make recommendations to GILBERT regarding requests for payment, (5) maintain PROJECT records, (6) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (7) do other tasks related to the coordination of the WORK.

1.17.2 ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 ENGINEER will be GILBERT'S REPRESENTATIVE during the construction and until final payment to the CONTRACTOR is made. ENGINEER will advise and consult with GILBERT. All instructions to CONTRACTOR shall be forwarded through ENGINEER. ENGINEER will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of ENGINEER MANAGER in its administration of the CONTRACT, or by inspections, tests or approvals required.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACT'S identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of GILBERT Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of Clerk of the Town of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by ENGINEER, or (4) a written order for a minor change in the WORK issued by ENGINEER.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER. ENGINEER shall oversee the construction of the PROJECT.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PROJECT: Means the same as "WORK" as defined below.

2.1.29 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.30 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.31 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.32 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.33 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when ENGINEER certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.34 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.35 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.36 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify ENGINEER.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the GILBERT Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinance and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT’S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. 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 the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 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 subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 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. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the 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 certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'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:

3.3.10.1 GILBERT, and ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's 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 as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 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 performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30 day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. 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 Offices, 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, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability 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 GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. 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.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, 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.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of

the signing official.

3.5 INDEMNIFICATION OF GILBERT AGAINST LIABILITY

3.5.1 To the fullest extent permitted by law, CONTRACTOR, 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 CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

3.5.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as ENGINEER may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated hereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is

stopped for safety reasons. The ENGINEER, with GILBERT approval, shall issue a stop work order until the violation ceases. The ENGINEER shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER’S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed hereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or ENGINEER has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and ENGINEER have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or ENGINEER make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from ENGINEER.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or

require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give ENGINEER access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to ENGINEER and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify ENGINEER, who shall immediately notify ENGINEER. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, ENGINEER shall be so notified in writing. ENGINEER shall immediately notify ENGINEER who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement

of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

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

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

4.6.2.3 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. Contractor 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. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

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

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

4.6.3 Equal Treatment of Workers

4.6.3.1 CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the WORK. CONTRACTOR 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"). CONTRACTOR shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of ENGINEER does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of ENGINEER be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of ENGINEER. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall submit a Traffic Control Plan to GILBERT'S traffic engineer in accordance with Section 10-5(b) of the Gilbert Municipal Code. No work shall begin until a Traffic Control Plan has been approved, unless authorized in writing by the ENGINEER. CONTRACTOR shall coordinate with the various agencies both commercial and public, involved in the collection and removal of trash and garbage, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.4 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of ENGINEER, are required.

4.8.5 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.6 CONTRACTOR shall provide ENGINEER with the emergency phone number of his representatives.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of ENGINEER and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with ENGINEER'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and ENGINEER has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact

GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace

these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.16.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by ENGINEER for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by ENGINEER. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to TOWN, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications.. Approval by TOWN does not guarantee acceptance of the final Work, which will be determined by ENGINEER after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the

construction items involved nor in the CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to the GILBERT'S REPRESENTATIVE. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to ENGINEER for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If ENGINEER finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to 3 WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first 3 WORKING DAYS lost due to bad weather conditions. Attention is directed to the nearest weather bureau station in the vicinity of the WORK for determining the extremes of temperature, wind velocities and the amount and intensity of precipitation that can be expected.

4.23.3 To receive consideration, a request for extension of time must be made in writing to ENGINEER stating the reason for said request, and such request must be received by ENGINEER within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 ENGINEER shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S or ENGINEER'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An

extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to ENGINEER one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in a Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by ENGINEER. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 ENGINEER will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. ENGINEER will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

VERTICAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

HORIZONTAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER. Activity durations shall be the

total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

H. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to ENGINEER one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 ENGINEER will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, ENGINEER will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 <u>Monthly Updates</u>

5.1.3.1 CONTRACTOR shall submit to ENGINEER each month an up-to-date status report of the work. The status report shall include:

A. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

5.1.3.2 ENGINEER will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use ENGINEER’S determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate ENGINEER’S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 <u>Schedule Revisions</u>

5.1.4.1 If the sequence of construction differs significantly, as determined by ENGINEER, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to ENGINEER for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to ENGINEER, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to ENGINEER, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. ENGINEER will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed CONTRACT SCHEDULE, CONTRACT SCHEDULE monthly updates, CONTRACT SCHEDULE revisions and recovery schedules:

5.1.5.1 **VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed CONTRACT SCHEDULE will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide all the schedule files in Primavera compatible format on CD.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight copies of the SIS shall be submitted to ENGINEER at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of ENGINEER.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the ENGINEER, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the ENGINEER the backlog of work.
- In addition, ENGINEER may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the ENGINEER finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, ENGINEER may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT, that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports
CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to ENGINEER for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with GILBERT'S REPRESENTATIVE.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of GILBERT'S REPRESENTATIVE, the Town Manager shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give ENGINEER access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS shall be regarded as a part thereof and ENGINEER will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by ENGINEER.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify ENGINEER. ENGINEER shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall

immediately notify ENGINEER. ENGINEER shall proceed as prescribed in Section 4.5.1 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed there for.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 INSPECTION

5.9.1 CONTRACTOR shall furnish ENGINEER with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. ENGINEER shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting and facilitating the progress of the WORK. ENGINEER shall be furnished with such

information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of ENGINEER, it must, if required by ENGINEER, uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.2 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.3 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, ENGINEER before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to ENGINEER any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give ENGINEER timely notice of its readiness so ENGINEER may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to ENGINEER.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, ENGINEER shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to ENGINEER of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unity prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the ENGINEER.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish ENGINEER with an itemized cost breakdown together with supporting data including the quantities used in computing the unity price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the ENGINEER, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the ENGINEER. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section6.2.2 A. "First Line Supervision" shall mean a working foreman or lead craft worker other than the PROJECT superintendent.

6.2.2.3 Actual cost of the PROJECT superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the PROJECT superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the PROJECT superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise ENGINEER within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to ENGINEER within

five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by ENGINEER on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as ENGINEER may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by ENGINEER. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and ENGINEER shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation. CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by ENGINEER unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. ENGINEER shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call ENGINEER'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. ENGINEER shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor

to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by ENGINEER at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to ENGINEER, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. CONTRACTOR shall cooperate with ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 ENGINEER will review and approve or take other appropriate action upon CONTRACTOR'S submittals such as shop drawings, product data and samples for conformance with the SPECIFICATIONS. ENGINEER'S approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by ENGINEER; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

ENGINEER shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by ENGINEER. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by ENGINEER. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the

CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from ENGINEER, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER

Neither ENGINEER'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK.CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and ENGINEER. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to ENGINEER.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF THE GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2 are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.243 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.243.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of SUBSTANTIAL COMPLETION of the WORK, or designated portion thereof, is the date certified in writing by ENGINEER when construction is sufficiently complete, in accordance with the CONTRACT DOCUMENTS as they may have been modified by any CHANGE ORDERS agreed to by the parties, so that GILBERT may use or occupy the PROJECT, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the WORK by ENGINEER as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release or otherwise operate to excuse CONTRACTOR from his duty to complete the remainder of the WORK within the CONTRACT TIME including liability for liquidated damages.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to substantially complete the WORK within thirty (30) DAYS following receipt of the NOTICE TO PROCEED. Liquidated damages of $280 per day will be assessed CONTRACTOR for working each day beyond that time that CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION.

9.2.2 Final Completion: The FINAL COMPLETION Date is the date when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date upon which the warranty period commences.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to reach FINAL COMPLETION of the WORK within ten (10) DAYS after the date of SUBSTANTIAL COMPLETION. Liquidated damages of $280 per day will be assessed CONTRACTOR for each working day beyond that time that CONTRACTOR fails to achieve FINAL COMPLETION.

9.3 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.3.1 VERTICAL PROJECTS

9.3.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.3.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.3.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.3.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.3.2 **HORIZONTAL PROJECTS**

9.3.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.3.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.4 RECORD DRAWINGS

CONTRACTOR shall provide accurate data and field notes on red-line construction record drawings as construction progresses, for preparation of the "As-Built" drawings by ENGINEER.

9.5 COMPLETION AND INSPECTION

9.5.1 Notice of punch list inspection: When CONTRACTOR believes that the WORK is complete, it shall request in writing a punch list inspection. Within five (5) working days of the receipt of such request, ENGINEER shall make a punch list inspection or inform CONTRACTOR that the WORK is not ready for punch list inspection. Upon completion of the deficient WORK, CONTRACTOR shall again request a punch list inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend any punch list inspection, CONTRACTOR shall be charged for the cost of ENGINEER and other design professionals who attended the punch list inspection.

9.5.2 Punch list. ENGINEER shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. No one is authorized to amend the CONTRACT DOCUMENTS by use of the punch list, which is solely for the benefit of CONTRACTOR to enable him to determine what items must be corrected before final acceptance will be recommended by the ENGINEER. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6 FINAL ACCEPTANCE

9.6.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by ENGINEER, including WORK found to be incomplete pursuant to Section 9.5, ENGINEER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of ENGINEER'S final inspection. GILBERT will make final acceptance in writing promptly after receiving ENGINEER'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.6.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on GILBERT approved payment application form and accompanied by a cover letter in a format approved by GILBERT.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by ENGINEER for WORK completed through the last day of the preceding calendar month. If requested by the ENGINEER, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered

material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 **VERTICAL PROJECTS** Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to ENGINEER a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by ENGINEER, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the ENGINEER, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to ENGINEER:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly a concisely detailed.

10.6.3 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.4 Upon receipt of the submittals required in Section 10.6.2, ENGINEER shall prepare a written estimate of the sum due to CONTRACTOR. This estimate shall take into account the CONTRACT SUM, 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. ENGINEER shall prepare a statement of final inspection, stating that the work has been given a final inspection, that CONTRACTOR has submitted the required documents, setting forth with detail any deviations in the WORK as completed from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. ENGINEER'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. ENGINEER shall provide a copy of the statement of final inspection and ENGINEER'S estimate of the sum due to CONTRACTOR.

10.6.5 If CONTRACTOR contests the estimate of sums due prepared by ENGINEER, within five (5) working days following delivery to CONTRACTOR of ENGINEER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the GILBERT Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to ENGINEER'S final estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of ENGINEER'S estimate.

10.6.6 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.7 USE OF GILBERT'S ALLOWANCE

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of _____,

CONTRACTOR'S License No. _____

A corporation organized and existing under the laws of the State of _____; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by _____ for the consideration hereinafter set forth.

2. To hold his Bid open for not less than one hundred ninety days (90) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $_____ per working day
Final completion - $_____ per working day

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, <u>as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above</u>.

NAME OF BIDDER: _____

TOWN OF GILBERT
BID SCHEDULE

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Shade Structure and Installation per Plan	1	L.S.		
2	Graffiti Guard Application to Posts	1	L.S.		

TOTAL BID PRICE (Items 1-2 Inclusive) $_____
(In Numbers)

_____ Dollars
(In Words)

_____ Cents

GILBERT'S ALLOWANCE AMOUNT $0.00 (In Numbers)
Zero Dollars Zero Cents (In Words)

CONTRACT SUM (total bid price plus GILBERT'S allowance) $_____
(In Numbers)

_____ Dollars_____ Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this _____ day of _____, 20__.

_____
Name of BIDDER (Company)

_____
Address of BIDDER

_____
City, State, Zip Code

_____
Area Code/Telephone Number

_____
Fax Number

_____
Authorized Officer/Title

_____
Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative to this bid and the administration of this bid for and on behalf of the Company named above.

_____ or
Corporate Secretary (signature)

_____
Partner Signature

_____
Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	NOMINEE	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1.			
2.			
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1.

2.

3.

4.

5.

Submitted by:_____
(Bidder)

Signed By: _____

Name and Title:_____

COPY(s) OF BIDDER'S STATE OF ARIZONA CONTRACTOR'S LICENSE(S)

Attach copy of required license(s)

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, (hereinafter "Principal"), and the _____, a corporation duly organized under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for

_____

_____.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this _____ day of _____, 20____.

_____
Principal

_____
Title

Witness:

_____

_____
Surety

_____
Title

Witness:

_____

Address of Surety:

_____

_____

* Attach Power of Attorney

AFFIDAVIT BY CONTRACTOR CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

_____
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is _____ of _____.
(Title) (Name of Business)

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said _____
(Name of Business)
has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

_____
(Signature)

_____
(Title)

_____
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20_____.

_____
Notary Public

My commission expires:

_____

BIDDERS' QUESTIONNAIRE
[To Be Submitted With Bid]

BIDDER'S RESPONSIBILITY SUPPLEMENTAL EVALUATION CRITERIA

Organizational Information

BIDDER:_____
(Bidder's name)

Submitted by:

Name of Organization: _____

Name of Individual: _____

Title: _____

Address: _____

_____

_____

Telephone: (____)_____

Bidder's General Business Information

Check If: [ ] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
_____

_____

b. List of Executive Officers:

Name	Title

_____

_____

_____

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name Title

_____

_____

_____

_____

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [ ] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: _____

Address: _____

_____

Account Manager: _____

Telephone Number: (____) _____

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER:_____
(Bidder's name)

a. Name of Similar Project #1: _____

b. Contracting Party (Owner):
Name:_____
Address:_____
Telephone Number: (_____) _____

c. If Joint Venture, names of each participant:
_____
_____
_____

d. Contract Price:_____

e. Description of Similar Project #1:_____

_____
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:
Name:_____
Address:_____
Telephone Number: (_____) _____

g. Start date (notice to proceed issued):_____

h. Completion date provided for in the Contract:____

i. Substantial completion date (approved by Owner):_____

j. Reasons why work was completed early, or why delays occurred:
_____

_____

_____

k. Final price paid by Owner for the Similar Project #1:_____

l. If final price was 10% less or more than the original Contract Price, describe why:
_____
_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
_____
_____
_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No _____ If so, what was the result? _____
_____
_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
_____
_____
_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
_____
_____
_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER:_____
(Bidder's name)

a. Name of Similar Project #2: _____

b. Contracting Party (Owner):
Name:_____
Address:_____
Telephone Number: (_____) _____

c. If Joint Venture, names of each participant:
_____
_____
_____

d. Contract Price:_____

e. Description of Similar Project #2:_____

_____
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:
Name:_____
Address:_____
Telephone Number: (_____) _____

g. Start date (notice to proceed issued):_____

h. Completion date provided for in the Contract:____

i. Substantial completion date (approved by Owner):_____

j. Reasons why work was completed early, or why delays occurred:
_____

_____

_____

k. Final price paid by Owner for the Similar Project #2:_____

l. If final price was 10% less or more than the original Contract Price, describe why:
_____
_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
_____
_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No _____ If so, what was the result? _____
_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
_____
_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
_____
_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER:_____
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

_____

_____

_____

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:
_____

_____

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?
_____

_____

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

_____

_____

_____

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes_____ No_____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors? _____

_____

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes_____ No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

_____

_____

_____

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No _____. If yes, described circumstances: _____

_____

_____

Equipment

BIDDER:_____
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract? Explain: _____

_____

_____

b. Will any equipment need to be rented or leased by Bidder? Explain: _____

_____

_____

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the prompt and efficient execution of the documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR I hereby declare that

_____

(name(s) of persons authorized)

is/are authorized to execute and sign on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payrolls
4. Claims
5. CHANGE ORDERS
6. All other papers necessary for the conduct of the corporation's affairs and the execution of the CONTRACT

for the duration of the CONTRACT or until written notice of revocation has been given, whichever occurs first.

In the event CONTRACTOR is governed by a board of Directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto, and I hereby verify that such Resolution remains in full force and effect

_____

Name

_____

Title

(Seal of Corporation)

STATE OF _____)
) ss.
County of _____)

This Authorized Signature Form was acknowledged before me this _____ day of _____, 20_____ by _____,

who appeared before the undersigned Notary Public, and stated that he/she executed such instrument on behalf of _____ for the purpose therein expressed.

_____
Notary Public

My Commission Expires:

_____

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No.:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform, provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____
_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

TECHNICAL SPECIFICATIONS

Spring Meadows (PKID 07-4) FY14-15 March 2014

General description: Site amenities improvements for the park area on S. Riata Street and E. Saratoga Street. The Town reserves the right to reduce the scope of work or eliminate some items in this contract. Locations, layouts, and condition of existing features as it interfaces with this phase of work will need to be field verified.

Description of FY14-15 work for Spring Meadows (PKID #07-4) follows.

Spring Meadows FY14-15 Site Amenity improvements

Work includes:

- Preservation and protection of existing plantings, irrigation system, pavements, walls, concrete header or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation, turf, rock ground cover, wood fiber and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Providing and installing new site amenities (Shade Structure) as shown per plans.
- Restoration of existing wood fiber and granite areas, remove any debris.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.