REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR CONSTRUCTION MANAGER AT RISK (CM@R) SERVICES FOR CONSTRUCTION MANAGER AT RISK PROJECT

Project Name: Layton Lakes Lift Station Force Mains Rehabilitation
CIP Project Number: WW101
Contract Number: 2016-7010-0060

1.0 REQUEST FOR QUALIFICATIONS

The Town of Gilbert invites qualified Construction Managers/General Contractors with experience in the Construction Manager at Risk (CM@R) project delivery method to submit a Statement of Qualifications (SOQ) for the above referenced project.

2.0 INSTRUCTIONS

Sealed Statements of Qualifications will be received at the Town Clerk's Office, 50 East Civic Center Drive, Gilbert, Arizona 85296 until **3:00 p.m. Arizona Time, September 14, 2015**. One (1) original and six (6) copies of the SOQ must be submitted in a sealed envelope clearly marked: "SOQ for CM@R Services: Project Name: **Layton Lakes Lift Station Force Mains Rehabilitation, CIP Project Number: WW101, Contract Number: 2016-7010-0060". Any Statement of Qualifications received at the wrong location, unsealed or after the time specified will not be accepted and shall be returned without being opened.** It is the firm's responsibility to assure Statements of Qualifications are received at the above location on or before the specified time.

The SOQ shall include a one-page cover letter plus a maximum of twelve (12) pages to address the SOQ criteria specified (including organization chart). Exhibit A, Attachments 1 & 2 and CPM Construction Progress Schedules shall be attached as an appendix to the SOQ and do not count against the 12 page limitation. Supplemental resumes in the appendix are not allowable, and will be cause for disqualification.

Please be advised that failure to comply with the following criteria will result in disqualification:

- Receipt of submittal by the cut-off date and time specified.
- Receipt of submittal at the proper location.
- Receipt of a sealed submittal package.
- The number of originals and/or copies of the submittal specified.
- Adherence to maximum page requirements.
- Acknowledgement of all addenda in the cover letter.
- Supplemental resumes are not allowed.

Adherence to the maximum page criteria is critical; each page side (maximum 8-1/2" x 11") with criteria information will be counted. Pages and tabs that have photos, charts, graphs or criteria information will be counted towards the maximum number of pages. The minimum allowable font size shall be 11.

A pre-submittal conference will be held on **August 27, 2015 at 1:00 p.m. Arizona Time** at the Town of Gilbert, 50 East Civic Center Drive, Gilbert, Arizona 85296, Conference Room300. Attendance at this meeting is not mandatory but it is highly recommended since vital information necessary to the understanding of the Project and the selection process will be discussed.

3.0 GENERAL DESCRIPTION OF PROJECT

GILBERT intends to rehabilitate two sewer force main pipelines that serve the Layton Lakes Lift Station. Existing 18-inch and 14-inch concrete lined Ductile Iron Pipe (DIP) force mains both need to be rehabilitated due to pipeline corrosion. This project request is related to the force main pipe failure that occurred on Greenfield road between Germann and Queen Creek in May, 2014. This project proposes to rehabilitate both force main pipelines from the discharge manhole back to the lift station site using a trenchless rehabilitation method. The project also proposes to install pipeline inspection ports every 1800 feet (for a total of 6 ports on each force main pipeline). The primary location of this project is the two mile stretch of Queen Creek road between Greenfield and Lindsay. However, some work will also need to occur on Greenfield road and on Lindsay road as well. The approximate length of each pipeline to be rehabilitated is 12,067 feet (or 2.28 miles). The Preliminary Project Description is attached. There will be a single final list of at least three five firms. Pursuant to A.R.S. § 34-605G, the successful firm shall perform, with its own organization, construction work that amounts to not less than forty-five percent (45%) of the total contract price for the construction. A project is horizontal construction if more than one-half of the total contract price for the construction is for horizontal construction.

The estimated budget for the construction services is: **$6,005,000.**

The (tentative) schedule for commencement of construction is: **July 2016.**

4.0 SCOPE OF WORK

The Town of Gilbert intends to procure a Construction Manager at Risk to construct the improvements described in Section 3 above. This project will be constructed pursuant to A.R.S. 34-601 et seq. The total program budget for the project is approximately $6,005,000 including internal and external costs.

4.1 The CM@R services will be performed in both the design phase of the Project and the construction phase of the project, with two separate contracts. Phase I, the first contract, will include the pre-construction services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II, the second contract, will include complete construction services for the construction of the Project.

4.2 After being selected, the CM@R will execute a contract with GILBERT to provide pre-construction services during the design phase of the project as follows:

- CM@R will be a part of the Project Design Team and will participate in the Project Review and consult with Gilbert staff and the Project engineer during Project development.
- CM@R will provide value analysis services, value engineering and offer cost savings suggestions and best value recommendations.
- CM@R will provide Project planning and scheduling.
- CM@R will provide constructability studies and reviews.
- CM@R will assist in the coordination of Contract Documents.
- At the completion of the design or at any earlier time as required by GILBERT, CM@R will submit a Construction Guaranteed Maximum Price (GMP) to GILBERT for one or more construction phases.
- The CM@R may also be requested to provide Construction Cost Estimates based on marketplace conditions.
- The CM@R will act as the Town of Gilbert's fiduciary and have a relationship of trust and confidence between itself and GILBERT. For that reason the Project will be an "open book" job whereby GILBERT may attend any and all meetings of the CM@R firm relating to the Project and have access to any and all books and records of the CM@R relating to the Project.

4.3 After CM@R has submitted a Construction Guaranteed Maximum Price acceptable to GILBERT, CM@R and GILBERT intend to execute a second contract for complete construction services for the construction of the project or phase of the project. The CM@R will assume the risk of delivering the Project or phase of the project through a guaranteed maximum price contract. The CM@R will be responsible for construction means and methods. The CM@R shall self-perform at least 45% of the total contract price for construction.

5.0 SOQ FORMAT AND SCORING

The selection criteria and relative weights for determining the order of firms on the final list are as follows:

SECTION	MAXIMUM SCORE
General Information	10
Experience and Qualifications of the Firm/Team	20
Experience of Key Personnel Assigned to the Project	25
Understanding of CM@R Contracting - Project Approach to Performing the Required Services	25
Subcontractor Selection Plan	5
REFFERENCES	
References (Past performance verification)	15
Total Maximum Points	**100**

6.0 SELECTION PROCESS

6.1 Selection Committee: A Selection Committee will review the Statements of Qualifications and develop a final list with a minimum of three (3) firms based on the included "Evaluation Criteria". The criteria to be used to determine the order of firms on the final list are set forth in Section 5.0. The firms appearing on the final list will be invited to participate in an interview with the Selection Committee. Final selection will be based upon ordinal scores from the interviews alone. Each firm will then be ranked accordingly. In the event of a tie, total points from the interviews will be utilized as a tie-breaker.

6.2 Contract Negotiation: Upon completion of the final rankings, GILBERT will enter into negotiations with the highest ranked firm for a pre-construction phase services contract for the Project. If a contract cannot be successfully negotiated with the highest ranked firm, then negotiations will be terminated with that firm and GILBERT will enter into negotiations with the next highest ranked firm until an agreement is reached or an impasse is declared.

6.3 Key Personnel: The Firm shall ensure that Key Personnel identified in its SOQ shall be the Key Personnel assigned to the project. Such Key Personnel shall not be replaced without prior written acceptance of GILBERT. Unauthorized replacements will result in disqualification of the proposal or breach of the PM/CM agreement.

7.0 CONTENTS OF SOQ

Statements of qualifications shall be scored in accordance with Section 5.0 and contain the following information:

7.1 General Information:

- Provide a general description of the firm / team that is proposing to provide the pre-construction services and general construction services described herein. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel. List the names of the key persons who will be providing the services describing the services each will provide.
- Provide the following information:

  (A) List the Arizona professional and contractor licenses held by the firm and/or individuals who will be assigned to this project. Provide the license numbers and expiration dates, if applicable. The Proposer need not be licensed, but the person or firm actually performing construction services on behalf of the Proposer must be currently, and have been for at least one year immediately prior, a licensed general contractor in the State of Arizona.

(B) Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five years. Identify any claims arising from a contract which resulted a formal claim being filed with a public entity pursuant to A.R.S. 12-821.01 or has resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcomes.

(C) Provide a statement from an AM Best, Inc. rating of A or better surety company of the Company's bonding capacity. *Unless otherwise required by the public records law, this information will be confidential and will not be made part of the public record.* This statement shall be submitted with the SOQ packet in a separate sealed envelope, marked "CONFIDENTIAL". The outside of this sealed envelope should identify the firm and the project.

7.2 Experience and qualifications of the firm/team:

- Identify at least three comparable projects in which the firm served as either Construction Manager at Risk, agency Construction Manager during design and construction phases (with or without providing construction services), and/or General Contractor.
- For each comparable project identified, provide:

  (A) Description of project.

  (B) Role of the firm (specify whether Construction Manager at Risk, Construction Manager or General Contractor). If CM at Risk or General Contractor, identify the percent of work self-performed. Also specify services provided during design phase, (cost of estimating, scheduling, value engineering, etc.)

  (C) Project's original contracted construction cost and final construction cost.

  (D) Construction dates.

  (E) Project Owner.

  (F) Reference information (two names with telephone numbers per project).

- Identify the location of the firm's principal office, and percent of the work expected to be done locally.
- List of all the Town of Gilbert projects where the firm/team provided either design services, agency construction management or general construction services in the last five years either completed or ongoing.
- Submit copies of a CPM, Construction Progress Schedule (both the baseline schedule and the final completed schedule) for a previous similar project.

7.3 Experience of key personnel assigned to this project:

- For each key person identified, list at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and role of the key person. For other projects provide:

  (A) Description of project.

  (B) Role of the person.

  (C) Project's original contracted construction cost and final construction cost.

  (D) Construction dates.

  (E) Project Owner.

  (F) Reference information (two names with telephone numbers per project).

- Identify the home office location of key staff on this project, their length of time with the firm, and the percent of their work expected to be done locally.
- List any proposed consultants, including key staff names and the experience and qualifications of these individuals.

7.4 Understanding of CM@R Contracting - Project approach to Performing the Required Services:

- Describe your firm's project management approach and team organization during pre-construction and construction phase services.
- Discuss the major issues your team has identified on this project and how you intend to address those issues.
- Describe systems used for planning, scheduling, estimating and managing construction. Briefly describe the firm's experience on quality control, dispute resolution, and safety management.

7.5 Subcontractor Selection Plan

Responses shall include the firm's proposed subcontractor selection plan. The proposed subcontractor selection plan must provide for the selection of subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

7.6 Additional Submittal Requirements: The following information is required in the SOQ submittal, but has no score associated with it. **Failure to provide the required information, however, will result in disqualification of the SOQ as non-responsive.**

7.6.1 The minimum qualifications for this Construction Manager at Risk Contract are:

(A) Bondable for the work to be performed.

(B) Able to meet Town of Gilbert insurance requirements.

(C) Possess a current Town of Gilbert Transaction Privilege Tax License.

7.6.2 The Authorization for Release of Performance Information and Waiver form included in this packet as Attachment 1 shall be filled out, signed and submitted with the SOQ.

7.6.3 A "Certificate of Insurability" in the form included in this packet as Attachment 2, executed by the Proposer, shall be submitted with the SOQ. Within ten days of execution of a contract with GILBERT, the successful Proposer shall furnish proof of insurance in the amounts listed in the forms of Contract.

8.0 PAST PERFORMANCE VERIFICATION FORM (PPVF)

GILBERT desires to receive feedback on past performance of your projects. Mail or fax a copy of the attached Past Performance Verification form to Public/Private Agencies for which you have **substantially completed similar work**, to fill out a copy of the PPVF for three (3) similar projects. Provide this form to the Owner, or Owner's representative, **directly responsible for oversight of the project** to complete and submit via mail or fax prior to the date and time listed on the form. If your firm has completed previous **similar work** for the Town of Gilbert it is recommended that you utilize this experience. If your firm has not completed prior projects with GILBERT you will not be penalized.

Please list the agency or firm name, address, phone number and contact information for the Agency that will be providing the Past Performance Verification Form on attached **Exhibit A and include as an appendix to the SOQ**. Past Performance Verification Forms will only be accepted from the Agencies listed on Exhibit A.

Zero points will be awarded for projects:

- If Exhibit A is not included in the SOQ.
- If a PPVF is received after the date and time specified on the form.
- If a project is not listed on Exhibit A.
- If a project submitted is not substantially complete.
- If the firm submitting was not the **construction manager at risk**.
- If the person responding was not directly responsible for project oversight.

It is the **responsibility of the firm** submitting the SOQ to ensure that GILBERT receives **all** of the Past Performance Verification Forms prior to the deadline.

9.0 TOWN OF GILBERT CONTACT

Questions shall be directed in an email to **John Morgan. Questions must be received by the end of the business day September 10, 2015** so that response may be posted as an addendum to the RFQ.

- **Email: john.morgan@gilbertaz.gov**

All questions must be received in writing by GILBERT no less than five (5) working days prior to the SOQ submittal due date.

10.0 TERMS AND CONDITIONS

This RFQ does not commit GILBERT to award a contract, to defray any costs incurred in the preparation of a response to this request, or to procure or contract for services.

10.1 GILBERT reserves the right to extend the date by which the submittals are due.

10.2 GILBERT reserves the right to cancel, in part or in its entirety, this RFQ including but not limited to: selection schedule, submittal date, and submittal requirements. If GILBERT cancels or revises the RFQ all potential Respondents of record will be notified in writing by GILBERT.

10.3 All submittals become the property of GILBERT. Except for the name of firms on the final list, no information contained in a Statement of Qualifications shall be made public until after award and execution of a contract with a CM@R firm.

10.4 GILBERT reserves the right to request additional information and/or clarifications from any or all Respondents to this RFQ.

11.0 EQUAL OPPORTUNITY

GILBERT is an equal opportunity employer. Minority and women's business enterprises are encouraged to submit Statements of Qualifications on the Project.

12.0 PROTEST POLICY

The protest policy of the Town of Gilbert is attached.

Firms shall confirm receipt of all addenda issued to this RFQ in its cover letter submitted with its Statement of Qualifications. It is the Firm's sole responsibility to confirm receipt of all addenda issued to the RFQ. Failure to do so will result in the proposal being declared non-responsive. Firms will NOT be notified of addenda by fax. If addenda are issued they will be published on the Town of Gilbert Website at:

http://www.gilbertaz.gov/rfp

Attachments:

Exhibit A: Past Performance Verification Evaluation Submittals (Form CIP1.1.1)
Past Performance Verification Form (Form CIP1.1.1)
Preliminary Project Description (Form CIP1.1.2)
CM@R Pre-Construction Services Contract (Form CIP4.3.4)
CM@R Construction Services Contract (Form CIP4.3.5)
CM@R General Conditions (Form CIP4.3.6)
Protest Policy

ATTACHMENT 1 - AUTHORIZATION
FOR RELEASE OF PERFORMANCE INFORMATION AND WAIVER

I, _____, the undersigned, on behalf of _____ (this company), do hereby consent and authorize all those companies and government entities listed in my Statement of Qualifications and any other government entity for whom this company has performed construction services, to disclose and release to the Town of Gilbert, or their representatives, information, records and opinions concerning this company's construction performance. The purpose of this disclosure is to provide references to the Town of Gilbert. _____ hereby waives any claim it may have against the Town of Gilbert or any company or entity providing information to the Town of Gilbert by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.

This authorization for disclosure of information is effective for one year.

This consent or Photostat copy of this authorization shall be as valid and effective as the original.

Dated: _____

_____

By: _____

ATTACHMENT 2 - CRITERIA OF INSURABLITY

I hereby certify that in seeking to be selected as the CM@R by the Town of Gilbert for the _____Project, CIP No. _____, Contract No. _____. I am fully aware of Insurance Requirements contained in both the CM@R Pre-construction Services Contract and the Construction Contract, and by the submission of this Statement of Qualifications I hereby assure the Town of Gilbert that I am to produce the insurance coverage required should I be selected to be awarded such contracts.

_____ _____

Signature of Offeror Date

_____

Title

PAST PERFORMANCE VERIFICATION FORM (PPVF)

Directions: Request Public/Private Agencies, for which you have **substantially completed** (design for A/E, construction for PM/CM, CM@R or Design-Builder) **similar work**, to fill out a copy of the PPVF for three (3) similar projects. Provide this form to the Owner or Owner's representative **directly responsible** for oversight of the project to complete and submit via mail or fax prior to the date and time listed below. If the form is received after the date and time specified it will not be accepted. If your firm has completed previous similar work for the Town of Gilbert it is recommended that you utilize this experience. If your firm has not completed prior projects with Gilbert you will not be penalized.

SOQ Due Date and Time: **09/14/2015 3:00 p.m. Arizona time**

PROJECT NAME: **WW101 – Layton Lakes Lift Station Force Mains Rehabilitation**

PROJECT ROLE SUBMITTING FOR: (circle one) **A/E** **PM/CM** **CM@R**

NAME OF COMPANY TO BE EVALUATED: _____

NAME OF AGENCY OR FIRM SUBMITTING EVALUATION: _____

NAME/PHONE NUMBER OF PERSON SUBMITTING EVALUATION: _____

NAME OF PROJECT AND DATE SUBSTANTIALLY COMPLETED: _____

QUESTIONS:

1. Has the above referenced project reached substantial completion? (circle one) **Yes** **No**
2. What project delivery method was utilized? (circle one) **Design-Bid-Build** **Design-Build** **CM@R**

What type of services did this firm provide on the project referenced?

_____

_____

_____

3. On a scale of 1 to 10 (1 being lowest, 10 highest), rate this company's performance on the following:
   a. How would you rate work performed by this firm on your project? _____
   b. Was the project completed on time? _____
   c. Was the project completed within budget? _____
   d. What was the quality of the work performed? _____
   e. Was staff proactive in solving problems that may have occurred on your project? _____
   f. What was the extent of staff turnover? *(10 = low staff turnover, 1 = high staff turnover)* _____
   g. Would you be willing to contract with this firm again? *(10 = Yes, 1 = No)* _____

   TOTAL POINTS _____

4. Any additional comments. _____

_____

All PPVE's must be emailed to John Morgan (by September 10th 2015 by 5:00 p.m.), Project Manager at john.morgan@gilbertaz.gov by the date shown above.

EXHIBIT A

PAST PERFORMANCE VERIFICATION EVALUATION SUBMITTALS

LIST OF THOSE AGENCIES OR FIRMS WHO WILL BE SUBMITTING EVALUATIONS TO TOWN

Please list the agency or firm name, address, phone number and contact information for the firms that will be providing the Past Performance Verification Form. It is the **responsibility of the firm** to ensure that Gilbert receives all of the Past Performance Verification Forms prior to the SOQ submittal deadline. Failure to provide evaluations by date and time specified will result in no score for that specific evaluation.

1. _____

_____

_____

_____

2. _____

_____

_____

_____

3. _____

_____

_____

_____

PRELIMINARY PROJECT DESCRIPTION
(Basic Information Requirements)

Project Name: Layton Lakes Lift Station Force Mains Rehabilitation

Project Number: WW101

Contract Number: 2016-7010-0060

Contact Person: John Morgan

Email: john.morgan@gilbertaz.gov

Project description: GILBERT intends to rehabilitate two sewer force main pipelines that serve the Layton Lakes Lift Station. Existing 18-inch and 14-inch concrete lined Ductile Iron Pipe (DIP) force mains both need to be rehabilitated due to pipeline corrosion. This project request is related to the force main pipe failure that occurred on Greenfield road between Germann and Queen Creek in May, 2014. This project proposes to rehabilitate both force main pipelines from the discharge manhole back to the lift station site using a trenchless rehabilitation method. The project also proposes to install pipeline inspection ports every 1800 feet (for a total of 6 ports on each force main pipeline). The primary location of this project is the two mile stretch of Queen Creek road between Greenfield and Lindsay. However, some work will also need to occur on Greenfield road and on Lindsay road as well. The approximate length of each pipeline to be rehabilitated is 12,067 feet (or 2.28 miles).

Total project budget: $6,005,000.00

Source of funding: Wastewater Replacement Fund

Project schedule:

Planned date of design start: January 2016

Planned date of design completion: June 2016

Planned date of construction start: July 2016

Planned date of construction completion: January 2017

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

Project: Layton Lakes Lift Station Force Mains Rehabilitation
CIP No.: WW101
Contract No.: 2016-7010-0060
Date: 8/19/15

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

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

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

1.0 TERMS AND DEFINITIONS

1.1 Addenda: Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

1.2 Alternate Systems Evaluations: Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project. These alternatives shall be tracked using a Cost Estimate Development Log as described in Section 1.12.

1.3 Change Order: A document signed by CM@R and GILBERT that authorizes an addition, deletion or revision in the Work or Deliverables, or an adjustment in the Contract Amount or the period of services, issued on or after the Effective Date of this Agreement.

1.4 Contract: This written document signed by GILBERT and CM@R covering the pre-construction phase of the Project, and including the Contract Documents referenced in or attached to this Agreement.

1.5 Construction Documents: A set of Drawings and Specifications, as defined, upon which cost estimates and GMP Proposal(s) are to be based and the General Conditions.

1.6 Construction Fee: The CM@R's profit.

1.7 Allowances Costs: Means those items included in the GMP as allowances, as more fully described on Exhibits B and C attached hereto and incorporated herein by reference.

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

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

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

1.9 Contract Amount: The final approved Contract Amount for this Contract as identified in paragraph 4.1.

1.10 Contract Time(s): The number of Working Days or the dates related to the construction of the Project or a Construction Phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.

1.11 Cost Estimate: The labor, materials, and equipment costs developed by the CM@R, and updated during each of the design phases, to support the "Cost of the Work" values used to develop the Guaranteed Maximum Price (GMP) for the Cost Model described in Exhibit B.

1.12 Cost Estimate Development Log: This document shall be developed by the CM@R during the design phases of the Project and lists design modifications in a tabular form that, if accepted, will result in additive and deductive changes to the Cost Estimate (See Exhibit E). The initial list includes design modifications for consideration that the CM@R, from past experience with similar projects, presents for consideration by the Project Team.

1.13 Cost of the Work: The sum of all allowable direct costs during construction, including Specification Divisions 1-16, Allowances, and Contractor Contingency, that would be, or actually were necessarily incurred by the CM@R, directly or through Sub-consultants, Subcontractors, and/or Suppliers in properly furnishing and performing the Work required by the Contract Documents. (See Exhibits B and C)

1.14 Cost Model: The cost model is identified in Exhibit B and on Cost Model Form CIP4.4. The cost model provides a formula for developing the Total Project Cost. The Total Project Cost is the sum of the Cost of the Work (Direct Costs), Indirect Cost, and Preconstruction Services.

1.15 Day: Calendar Day unless otherwise specified.

1.16 Deliverables: The work products prepared by the CM@R in performing the Work. Some of the major deliverables to be prepared and provided by the CM@R during the pre-construction phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Sub-Bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

1.17 Drawings: The one hundred percent construction submittal, which visually represent the scope, extent and character of the Work to be furnished and performed by CM@R during construction. Drawings have been prepared or approved by the Engineer, approved by GILBERT and are referred to and are included in the Contract Documents. The term includes Drawings that have reached a sufficient stage of completion and released by the Engineer

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

1.18 Engineer: The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth therein (A/E).

1.19 Final Completion: Final Completion is defined as the date when, in the opinion of GILBERT and the PM/CM, all substantial completion inspection punch-list items have been addressed and the work is complete in accordance with the contract documents. When a Project includes Construction Phases, Final Completion may be given for a Construction Phase.

1.20 Force Majeure: Force Majeure means, fire, unavoidable casualty, flood (assuming CM@R has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the CM@R and Subcontractors), or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the CM@R. A labor shortage or material shortage is not Force Majeure.

1.21 General Conditions Costs: Means those costs identified in Exhibit C.

1.22 Guaranteed Maximum Price (GMP) Proposal: The maximum compensation payable to the CM@R in performance of the work for the project or a Construction Phase as specified in the contract documents or subsequently adjusted by modification to the contract through a GMP Change Order. The GMP Proposal(s) are to be delivered pursuant to Article 2 of this Contract and are described in Exhibits B and C.

1.23 Horizontal Construction: Means highways, roads, streets, bridges, canals, floodways, earthen dams, and landfills (A.R.S. Section 34-101.15).

1.24 Laws and Regulations; Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.25 Notice of Award: The written notice by GILBERT to the CM@R stating that upon compliance by the CM@R with the conditions precedent enumerated therein, within the time specified, GILBERT will sign and deliver this Contract.

1.26 Notice to Proceed: A written notice given by GILBERT to CM@R fixing the date on which the CM@R will start to perform CM@R's obligations under this Contract or a Construction Phase.

1.27 Progress Payment Application: The form that is accepted by GILBERT and used by CM@R is requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and/or GILBERT.

1.28 Project: The total design and construction, including pre-construction services and construction services to be provided may be the whole, or a part.

1.29 Project Team: Pre-construction services team consisting of GILBERT, PM/CM, A/E, CM@R, and other stakeholders who are responsible for making decisions regarding the Project.

1.30 Record Drawings: Drawings (plans) prepared after construction is complete that represent the work accomplished under the contract.

1.31 Samples: Physical examples of materials, equipment, or workmanship representative of a part of the construction Work and which establish the standards by which the portion of the construction Work will be evaluated.

1.32 Shop Drawings: All Drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@R and submitted by the CM@R to illustrate some portion of the Work.

1.33 Specifications: The part(s) of the Contract Documents used during construction services consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.34 Subcontractor: An individual, firm or corporation having a direct contract with the CM@R or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction services Work at the site for which the CM@R is responsible for. Subcontractors will be selected through the Sub-Bid process described in paragraph 2.7 of this Contract.

1.35 Substantial Completion: The construction services for the Work (or a specified part thereof) has progressed to the point where, in the opinion of the PM/CM, as evidenced by a Certificate of Substantial Completion, such construction services are sufficiently complete in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; without any outstanding concurrent Work at the site, except as may be required to complete or correct Punch List items. If no such certificate is issued, Substantial Completion takes place when the construction services Work or a Construction Phase is complete and ready for final payment as evidenced by the PM/CM's written recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the construction Work refers to Substantial Completion thereof.

1.36 Supplier: A manufacturer, fabricator, supplier, distributor, material-man or vender having a direct contract with CM@R or any Subcontractor.

1.37 Total Float: Number of Working Days by which the pre-construction services or construction services Work or any part of the same may be delayed without extending a pertinent schedule milestone in the Project Schedule.

1.38 Town of Gilbert Project Manager: The person, firm or corporation designated by GILBERT to administer this Contract on behalf of GILBERT (PM/CM).

1.39 Town of Gilbert Project Representative: Any person, designated by GILBERT to oversee the Project in its entirety, inclusive of Capital Projects Administrator, GILBERT's Program Manager, GILBERT Engineers, etc.

1.40 Work: The pre-construction services described in this Contract and the entire completed construction services or the various separate Construction Phases thereof, required to be furnished pursuant to the Construction Services Contract. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents.

1.41 Working Days: Every day on the calendar exclusive of Saturdays, Sundays and holidays observed by GILBERT. WORKING DAYS shall be set forth in the CONTRACT SCHEDULE, unless the CM@R designates such days on their CPM schedule.

1.42 Written Amendment: A written modification to the Contract Documents, signed by GILBERT and the CM@R on or after the Effective Date of this Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

2.0 PRE-CONSTRUCTION SCOPE OF SERVICES

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

2.1 GENERAL

2.1.1 A/E and PM/CM: GILBERT has contracted separately with an Engineer to provide engineering services for the Project. GILBERT has either designated a GILBERT staff member to act as GILBERT's PM/CM or has contracted separately with a person, firm or

corporation to act as GILBERT's PM/CM. The PM/CM has no design responsibilities of any nature. None of the activities of the PM/CM supplant or conflict with the design, budget, or any other services and responsibilities furnished by CM@R or subconsultants. All instructions by GILBERT relating to this Contract will be issued or made through the PM/CM. All communications and submittals of CM@R to GILBERT shall be issued or made through the PM/CM unless GILBERT or the PM/CM shall otherwise direct. The PM/CM shall not reasonably withhold approval for the CM@R to communicate directly with GILBERT or the A/E. The PM/CM shall have the authority to establish procedures, consistent with this Contract, to be followed by the CM@R and to call periodic conferences to be attended by the CM@R and the CM@R's subconsultants, throughout the term of this Contract.

2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@R will provide to GILBERT, within 20 Working Days of the Notice to Proceed, a written evaluation of the Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

2.1.3 Project Management/Project Team/Progress Meetings: These meetings will present general Project progress, address design options that arise during the design process, and receive input and direction from GILBERT engineering and operational staff. Project management meetings shall be conducted weekly or as required. Team meetings shall be conducted throughout the design portion of the project, to complement the project schedule and design review meetings. The CM@R will participate in each meeting, report on the project construction schedule and cost estimate, and provide pertinent input when required.

2.1.4 The CM@R will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@R will promptly notify GILBERT in writing whenever the CM@R determines that any Drawings or Specifications are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Project Schedule, GMP and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 The CM@R, when requested by GILBERT or at its own initiative, if authorized by GILBERT, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The CM@R will assist the A/E and PM/CM in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings. This contract will require three (3) such public meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN (CMP)

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

strategies for the early procurement of long-lead equipment and/or materials, (5) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (6) permitting strategy, (7) safety and training programs , (8) construction quality control, (9) the Cost Model and basis of the model, (10) a matrix summarizing each Project Team member's responsibilities and roles and (11) construction security.

2.2.2 The CM@R will add detail to its previous version of the CMP to keep it current throughout the pre-construction services phase, so that the GMP is ready for implementation at the start of construction of the Project or any Construction Phase. The update/revisions will take into account (a) revisions in Drawings and Specifications; (b) the CM@R's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by GILBERT, PM/CM, A/E or the CM@R, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment and/or materials and (g) funding issues identified by GILBERT.

2.2.3 The CM@R will prepare a written report on the market conditions that may affect the budget or the schedule and provide the report to the PM/CM.

2.2.4 Cost Estimate Development Log: This document shall be developed by the CM@R at the beginning of the project and will initially include additive and deductive cost item suggestions that the CM@R has found from past experience on similar projects to be appropriate for consideration by the project team. The CM@R shall update this log on a regular basis during the design process and all additive/deductive items shall be approved by the PM/CM with input from the A/E.

2.3 PROJECT SCHEDULE

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

dates for the phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.5. The Construction Schedule developed during the preconstruction phase shall be resource loaded for manpower and cash flow during the construction of the project.

2.3.2 The CM@R will include and integrate in the Project Schedule the services and activities required of the PM/CM, A/E and CM@R, including all pre-construction and construction services. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, preliminary design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by GILBERT. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various Construction Phases, total float for all activities, relationships between the activities, GILBERT's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

2.3.3 The Project Schedule will be updated and maintained by the PM/CM with assistance from the Project Team throughout the pre-construction services phase such that it will not require major changes at the start of construction services or any Construction Phase to incorporate CM@R's plan for the performance of the construction services Work. The PM/CM will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than monthly. The PM/CM will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. The Project Schedule update will be submitted to the PM/CM by the 3rd Friday of each month to be reviewed and submitted to GILBERT's Representative.

2.3.4 Project Phasing: If phased construction is deemed appropriate and GILBERT approves, the CM@R will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, including any Construction Phase, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@R will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and other factors pertinent to saving time and cost.

2.3.5 Long-Lead Time Item Procurement: The CM@R will provide the PM/CM with a written list of long-lead items, if any, that must be procured during the pre-construction phase to meet the Project Schedule requirements and recommend a schedule for their procurement.

2.3.5.1 GILBERT may procure such long-lead items on terms and conditions acceptable to the CM@R to the extent GILBERT determines that it is their own best interest to

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

2.3.5.2 If GILBERT concludes alternately, that it is in its own best interest to have the CM@R procure such long-lead time items, GILBERT may, at its sole discretion, direct the CM@R to solicit bids, and upon approval by GILBERT of the terms and conditions of their purchase, GILBERT will authorize in writing the CM@R to issue purchase orders for those items. Only upon approval of GMP Proposals, or upon a separate executed procurement agreement, will GILBERT authorize the CM@R to actually expend Project funds for such long-lead items.

2.3.5.3 If GILBERT chooses not to procure long-lead time items prior to acceptance of a GMP Proposal, the CM@R will list the items and a delivery schedule in the Sub-Bid Documents. The CM@R will notify the potential Suppliers, Subcontractors, and fabricators of the required delivery schedule so that it will be taken into consideration, if necessary in their bid.

2.4 DESIGN DOCUMENT REVIEWS

2.4.1 The CM@R will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact GMP Proposals and/or the Project Schedule and provide this information in a written report to the PM/CM.

2.4.2 The CM@R will identify, in writing and in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CM@R to construct the Project. After completion of pre-construction services, the CM@R may provide additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The CM@R will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

2.4.3 The CM@R will meet with the Project Team as required to review designs during their development. The CM@R will thoroughly familiarize itself with the evolving documents through schematic design (30%), design development (60%), construction documents (95%), and final documents (100%). The CM@R will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@R will also advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@R will recommend cost effective alternatives.

2.4.4 The CM@R will conduct constructability and bidability reviews of the Drawings and Specifications at the 30%, 60%, and 95% document submittals. The reviews will attempt to

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

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

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

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

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

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

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

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

2.5 COST MODEL, COST ESTIMATES AND SCHEDULE OF VALUES

2.5.1 As soon as practical during the schematic design phase, the CM@R will review all available information regarding the design and scope of the Project and, based upon that review, will develop a schematic design Cost Estimate that will serve as input to the Cost Model identified in Exhibit B. The Cost Estimate will be continually updated and kept current as the design phases progress until a final GMP for the entire Project is established. The Cost Estimate will be the best representation by the CM@R of what the complete functional Project's construction costs will be. The CM@R will communicate to the Project Team, any assumptions made in preparing the Cost Estimate. The Cost Model will include (a) the Cost of the Work (Cost Estimate, allowances and contingencies), (b) Indirect Costs, and (c) Preconstruction Services. The sum of (a) and (b) defines the GMP and the sum of (a) through (c) gives the Total Project Cost.

2.5.2 During the design phases the CM@R shall maintain a Cost Estimate Development Log (see Exhibit E) in which he tracks the additive and/or deductive changes to the Cost Estimate based on the CM@R's review of design documents made available at the specified design phase. The PM/CM, A/E and CM@R will reconcile any disagreements on the estimate to arrive at an agreed upon Cost Estimate for the construction costs based on the scope of the Project through that specified design phase. The design phases applicable to this paragraph are: schematic design completion, design development completion, construction documents completion, and final completion at 30%, 60%, 95% and 100%. If the Project Team requires additional updates of the Cost Estimate beyond that specified in this paragraph, the CM@R will provide the requested information in a timely manner.

2.5.3 If at any point the Cost Estimate submitted to GILBERT exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or GILBERT's Project Budget, the CM@R will make appropriate recommendations to the PM/CM and A/E on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the project's basic program) such that it is equal to or less than the established Project Team's target and/or the Project Budget. These changes to the Cost Estimate shall be identified in the Cost Estimate Development Log.

2.5.4 Before the first Application for Payment, the CM@R shall submit to GILBERT, and the parties shall agree upon, a schedule of values, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion. This schedule of values shall be used as a basis for payment.

2.5.5 The CM@R will prepare a monthly cash flow projection for the Project. This projection shall be updated on a monthly basis to reflect payments to the CM@R for completed work.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

2.6.1 GILBERT's construction budget for this Project is $5,113,000. During the formulation of the Project and execution of the design the CM@R shall maintain cost controls to deliver the Project GMP within the Project budget. If at any time during the design of the Project it appears that the cost of construction may exceed the Project construction budget the CM@R shall immediately notify GILBERT. Project budgets will be developed for each Construction Phase. If the GMP provided by the CM@R at any point exceeds the Project budget, the CM@R shall recommend approaches to bring the Project within budget.

2.6.2 The Indirect Cost percentages associated with General Conditions, Bond allowance, Sales Taxes, Insurance allowance, and Contractor's Fee; of the Guaranteed Maximum Price (GMP) Cost Model given in Exhibit B shall be negotiated prior to the execution of the Contract and shall be used in subsequent GMP Proposal development. These percentages are to be applied to the "Cost of the Work" estimates for both additive and deductive change orders.

2.6.3 At the stage of design as approved by GILBERT and PM/CM, the CM@R shall, if requested by GILBERT, propose a GMP, which shall be the sum of the estimated Cost of the Work and the Indirect Costs as defined in the "Guaranteed Maximum Price (GMP) Cost Model" given in Exhibit B.

2.6.4 The preconstruction services shall be negotiated separately and shall include all costs, including indirect costs and fee, associated with that phase of the work.

2.6.5 The Total Project Cost is the sum of the GMP Proposal, Preconstruction Services, and prior phase GMPs as defined in the Guaranteed Maximum Price Cost Model given in Exhibit B.

2.6.6 The CM@R shall include with the GMP Proposal a written statement of its basis, which shall include:

2.6.6.1 A list of the Design Materials and Construction Documents, including all addenda, which were used in preparation of the GMP Proposal.

2.6.6.2 A list of allowances and a statement of their basis.

2.6.6.3 A list of the assumptions and clarifications made by the CM@R in the preparation of the GMP Proposal to supplement the information contained in the Design Materials and Construction Documents.

2.6.6.4 The date of Substantial Completion upon which the GMP Proposal is based and the Schedule of Work upon which the date of Substantial Completion is based.

2.6.6.5 A schedule of applicable alternate prices.

2.6.6.6 A schedule of applicable unit prices.

2.6.6.7 A statement of Additional Services included, if any.

2.6.6.8 The time limit for acceptance of the GMP Proposal.

2.6.6.9 A list of the proposed personnel or positions that the CM@R intends to station at the jobsite to manage the work.

2.6.7 The CM@R shall meet with GILBERT and the PM/CM to review the GMP Proposal. In the event that GILBERT and PM/CM discover any inconsistencies or inaccuracies in the information presented, GILBERT and PM/CM shall promptly give written notice to the CM@R, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

2.6.8 Prior to GILBERT'S acceptance of the Contractor's GMP Proposal, the CM@R shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as GILBERT and PM/CM may specifically authorize in writing.

2.6.9 The CM@R, in preparing any GMP Proposal, will obtain from the A/E three sets of signed, sealed, and dated Construction Documents (including all addenda). The CM@R will prepare its GMP in accordance with GILBERT's "Request for GMP Proposal" requirements based on the most current completed Construction Documents at that time. The CM@R will mark the face of each document of each set upon which its proposed GMP is based. The CM@R will send one set of those documents to the PM/CM, keep one set and return the third set to the A/E.

2.6.10 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.

2.6.11 In the event the CM@R elects, in its sole discretion, to maintain a Contractor Contingency within the GMP, the Contractor Contingency must be acceptable to GILBERT. In addition, the terms and conditions regarding use of the contingency during construction services will be established by GILBERT and reflected in the Construction Phase Notice to Proceed for that phase of the Project. The use of the Contractor Contingency will be based on these mutually agreeable terms and conditions and written approval from the Owner shall be a prerequisite to the CM@R's use of the Contractor Contingency. CM@R will establish and maintain a Contractor Contingency Log and shall review the status of the Contractor Contingency with the PM/CM at each weekly meeting.

2.6.12 GMP Proposal(s) Review and Approval

2.6.12.1 The CM@R will meet with the PM/CM and A/E to review any GMP Proposal(s) and the written statement of its basis. In the event the PM/CM or A/E discovers inconsistencies or inaccuracies in the information presented, the CM@R will make adjustments as necessary to the GMP Proposal, its basis or both.

2.6.12.2 Upon receipt of any GMP Proposal from the CM@R, GILBERT may submit the same documents that were used by CM@R in developing his GMP to an independent third party or to the A/E for review and verification. The third party or A/E will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.

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

A. Accept the CM@R'S original or revised GMP Proposal, if within GILBERT's budget, without comment.

B. Accept the CM@R'S original or revised GMP Proposal that exceeds GILBERT's budget, and indicate in writing to the CM@R that the Project Budget has been increased to fund the differences.

C. Reject the CM@R'S original or revised GMP Proposal because it exceeds either or both GILBERT's budget and the independent third party's or A/E's estimate, in which event, GILBERT may terminate this Contract and/or elect to not enter into a separate contract with the CM@R for construction associated with the scope of Work reflected in the GMP Proposal.

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

2.7 COMPETITIVE BIDDING AND SUB-BIDS

2.7.1 The CM@R will develop a written Subcontractor Selection Plan for approval by GILBERT that includes the names of a minimum of three qualified Subcontractors for each trade in the Project and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the CM@R will request approval by the PM/CM to submit less than three names. No change in the approved Subcontractors will be allowed without prior written approval by GILBERT.

2.7.2 If prior to receipt of Sub-Bids or prior to award of Subcontractors or Suppliers, GILBERT objects to any nominated Subcontractor or Supplier or to any self-performed Work for good reason, the CM@R will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Sub-Bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by GILBERT, the CM@R proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

2.7.3 The CM@R will distribute Drawings and Specifications and conduct a pre-bid conference with prospective Subcontractors.

2.7.4 If the Work is defined as Horizontal Construction the CM@R shall self-perform at least 45% of the construction Work.

2.7.5 The CM@R, at the required time, will close the bidding and collect all Sub-Bids received within the prescribed deadline for receipt of Sub-Bids. Promptly, after the closing of Sub-bids, the CM@R will (in the presence of the PM/CM) open and read all properly and timely submitted Sub-Bids. The CM@R will submit a completed Sub-Bid tabulation form to the PM/CM within a reasonable time after the closing of the Sub-Bid opening proceedings.

2.7.6 The CM@R, upon opening of Sub-Bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective Suppliers selected by each apparent low Sub-Bidder. The CM@R will resolve any Sub-Bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

2.7.7 If the CM@R elects to utilize a subcontractor whose bid was not lowest the CM@R shall request written approval from GILBERT for use of the subcontractor and shall state the reason(s) for not using the lowest bidder.

2.7.8 Within fifteen (15) Days after Sub-Bid opening, the CM@R will deliver to the PM/CM a written Notice of Intent to Award, itemizing the Subcontractors and Suppliers selected by the CM@R. The Notice of Intent to Award will detail (a) for each Sub-agreement the amount of the Sub-Bid and the corresponding Subcontractor or Supplier, (b) the sum of Sub-Bids received for all intended Sub-agreements, (c) trade work that the CM@R intends to self-perform, if any.

2.7.9 Early selection of subcontractors or suppliers based on qualifications and/or price will be performed in accordance with applicable State procurement laws. If the CM@R believes early selection of subcontractors is in the best interest of the Project he will notify the PM/CM in writing outlining which subcontractors and/or suppliers should be considered on this basis. This procedure shall be in accordance with the Subcontractor Selection Plan. The PM/CM will review this request and respond in writing within fourteen (14) days.

3.0 PERIOD OF SERVICES

3.1 The pre-construction services described in Section 2 will be performed by CM@R in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@R to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by GILBERT.

3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for GILBERT, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal GILBERT holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. on the day of performance.

4.0 CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

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

4.1.1 For the Basic Service described in Section 2, and performed to the satisfaction of GILBERT, the not-to-exceed amount: _____ dollars and no cents ($_____).

4.1.2 For the Additional Services described in paragraph 4.3, and performed to the satisfaction of GILBERT, the not-to-exceed amount: _____ dollars and no cents ($_____).

4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CM@R for pre-construction services will be submitted to PM/CM and will be accompanied by a progress report, detailed invoices, and receipts. Any request for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, an updated cash flow report, plus similar narrative and listings of Deliverables associated with their Work. Services will be paid in accordance with the work effort expended on that service during the preceding month.

4.2.2 The Contract fees for CM@R and Subconsultants will be based upon the hourly rate schedule included as Exhibit A attached.

4.2.3 The CM@R will pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after the CM@R has received payment for those services from GILBERT.

4.2.4 The CM@R agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances such as utility companies and outside agencies which are beyond the reasonable control of GILBERT during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time (noncompensable) for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@R to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of GILBERT of any of its legal rights herein.

4.2.5 No compensation to the CM@R will be allowed contrary to Article 1, Chapter 1, Title 34 of the Arizona Revised Statutes.

4.2.6 If any service(s) executed by the CM@R is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@R, the CM@R is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL SERVICES

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

A. Potholing
B. Surveying
C. Other
[Modify Additional Services as required]

5.0 TOWN OF GILBERT'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

6.0 CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

6.1.1 GILBERT Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of GILBERT and are to be delivered to the PM/CM before the final payment is made to the CM@R. Nonetheless, in the event these Project Documents are used, modified or adapted without the written consent of the CM@R, which consent the CM@R will not unreasonably withhold, GILBERT agrees to hold the CM@R harmless to the extent permitted by law, from the legal liability arising out of and or resulting from GILBERT's use, modification or adaptation of the Project Documents.

6.1.2 CM@R to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@R, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@R.

6.1.3 License to GILBERT for Reasonable Use: The CM@R hereby grants, and will require its Subconsultants to grant, a license to GILBERT, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require GILBERT to alter or modify the Project Documents, then paragraph 6.1.1 applies.

6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@R and its Subconsultants will endorse by professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@R'S WORK

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

6.3 ALTERATION IN CHARACTER OF WORK

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

6.4 DATA CONFIDENTIALITY

6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@R in the performance of this Contract.

6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@R in connection with the CM@R's performance of this Contract is confidential and proprietary information belonging to GILBERT.

6.4.3 The CM@R will not divulge data to any third party without prior written consent of GILBERT. The CM@R will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CM@R has first given the required notice to GILBERT:

6.4.3.1 Data which was known to the CM@R prior to its performance under this Contract unless such data was acquired in connection with work performed for GILBERT.

6.4.3.2 Data which was acquired by the CM@R in its performance under this Contract and which was disclosed to the CM@R by a third party, who to the best of the CM@R's knowledge and belief, had the legal right to make such disclosure and the CM@R is not otherwise required to hold such data in confidence; or

6.4.3.3 Data, which is required to be disclosed by the CM@R by virtue of law, regulation, or court.

6.4.4 In the event the CM@R is required or requested to disclose data to a third party, or any other information to which the CM@R became privy as a result of any other contract with GILBERT, the CM@R will first notify GILBERT as set forth in this Article of the request or demand for the data. The CM@R will timely give GILBERT sufficient facts, such that

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

6.4.5 The CM@R, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by GILBERT, will promptly deliver, as set forth in this section, a copy of all data to GILBERT. All data will continue to be subject to the confidentiality agreements of this Contract.

6.4.6 The CM@R assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate GILBERT if any of the provisions of this section are violated by the CM@R, its employees, agents or Subconsultants. For the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

6.5.1 Prior to start of any work or Deliverable under this Contract, the CM@R will submit to GILBERT, an organization chart for the CM@R staff and Subconsultants and detailed resumes of key personnel listed in its response to GILBERT's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, GILBERT hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@R desires to change such key personnel from performing such services under this Contract, the CM@R will submit the qualifications of the proposed substituted personnel to GILBERT for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@R will maintain an adequate number of competent and qualified persons, as determined by GILBERT, to ensure acceptable and timely completion of the scope of services described in Section 2 throughout the performance of this Contract. If GILBERT objects, with reasonable cause, to any of the CM@R's staff, the CM@R will take prompt corrective action acceptable to GILBERT and, if required, remove such personnel from the Project and replace with new personnel acceptable to GILBERT.

6.6 INDEPENDENT CONTRACTOR

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

6.7 SUBCONSULTANTS

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

6.8 TERMINATION

6.8.1 GILBERT and the CM@R hereby agree to the full performance of the covenants contained herein, except that GILBERT reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@R.

6.8.2 In the event GILBERT abandons any or all of the services or any part of the services as herein provided, GILBERT will so notify the CM@R in writing, and the CM@R will immediately after receiving such notice discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@R, upon such termination or abandonment, will promptly deliver to GILBERT all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by GILBERT.

6.8.4 The CM@R will appraise the work completed and submit an appraisal to GILBERT for evaluation. GILBERT will have the right to inspect the CM@R's work or Deliverable to appraise the work completed.

6.8.5 The CM@R will receive compensation in full for services satisfactorily performed to the date of such termination. The fee will be paid in accordance with Paragraph 4 of this Contract, and will be an amount mutually agreed upon by the CM@R and GILBERT. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Paragraph 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". GILBERT will make the final payment within sixty days after the CM@R has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

6.9.1 In the event of any dispute arising between GILBERT and the CM@R regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

6.9.2 Dispute Resolution Procedures: Initial Meeting to Resolve Disputes. Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at GILBERT's offices within three (3) Working Days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by GILBERT's Authorized Representative, the CM@R's Authorized Representative and any other person who may be

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

6.9.3 Mediation:

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

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

6.10 WITHHOLDING PAYMENT

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

6.11 RECORDS/AUDIT

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

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

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

6.12 INDEMNIFICATION

6.12.1 To the fullest extent permitted by law, CM@R, its successors and assigns shall indemnify and hold harmless GILBERT, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CM@R or other persons employed or used by the CM@R in the performance of this Agreement. CM@R's duty to indemnify and hold harmless GILBERT, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by CM@R's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person employed by CM@R or used by CM@R in the performance of this Agreement.

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

6.13 NOTICES

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

TO GILBERT:	TO CM@R:
Patrick Banger	Representative Name
Town Manager	Representative Title
Town of Gilbert	Company Name
50 East Civic Center Drive	Company Address
Gilbert, AZ 85296	Company Address

6.14 COMPLIANCE WITH FEDERAL LAWS

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

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

6.14.2 Immigration Law Compliance Warranty:

6.14.2.1 As required by A.R.S. § 41-4401, 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.

6.14.2.2 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.

6.14.2.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. 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).

6.14.2.4 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.

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

6.14.3 Equal Treatment of Workers: 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.

6.15 CONFLICT OF INTEREST

6.15.1 To evaluate and avoid potential conflicts of interest, the CM@R will provide written notice to GILBERT, as set forth in this section, of any work or services performed by the CM@R for third parties that may involve or be associated with any real property or personal property

owned or leased by GILBERT. Such notice will be given seven business days prior to commencement of the Project by the CM@R for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to

_____.

6.15.2 Actions considered adverse to GILBERT under this Contract include but are not limited to:

6.15.2.1 Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against GILBERT.

6.15.2.2 Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against GILBERT.

6.15.2.3 Using data to produce income for the CM@R or its employees independently of performing the services under this Contract, without the prior written consent of GILBERT.

6.15.3 The CM@R represents that except for those persons, entities and projects previously identified in writing to GILBERT, the services to be performed by the CM@R under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of GILBERT.

6.15.4 The CM@R's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.16 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE

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

6.17 CM@R'S TAX LIABILITIES

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

6.18 SUCCESSORS AND ASSIGNS

GILBERT and the CM@R will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither GILBERT nor the CM@R will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and GILBERT.

6.19 FORCE MAJEURE

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

6.20 COVENANT AGAINST CONTINGENT FEES

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

6.21 NON-WAIVER PROVISION

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

6.22 JURISDICTION

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

6.23 SURVIVAL

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

6.24 MODIFICATION

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

6.25 SEVERABILITY

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

6.26 INTEGRATION

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

6.27 TIME IS OF THE ESSENCE

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

6.28 THIRD PARTY BENEFICIARY

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

6.29 COOPERATION AND FURTHER DOCUMENTATION

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

6.30 CONFLICT IN LANGUAGE

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

6.31 GILBERT'S RIGHT OF CANCELLATION

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

7.0 INSURANCE

7.1 The CM@R will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with

the performance of the work or Deliverables, hereunder by the CM@R, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. If this is an OCIP Project, this Article will apply only to the pre-construction services described herein. Insurance requirements related to any construction Work done during the preconstruction phase will be defined in a separate contract associated with that phase. The CM@R will cause all Subcontractors to contain identical terms and conditions to those included in this Article.

7.2 The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Contract by the CM@R, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@R is free to purchase such additional insurance as it may determine necessary.

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

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____

CONSTRUCTION-MANAGER-AT-RISK

_____

By:_____

Title:_____

EXHIBIT A
HOURLY RATE SCHEDULE (CM@R)

HOURLY RATE REQUIREMENTS AND LIMITATIONS:

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

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

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

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

LIST OF EMPLOYEES AND SUBCONSULTANTS:

Position	Direct Labor Rates	Total Labor Rate

[CM@R to provide position titles, names and labor rates]

EXHIBIT B
GUARANTEED MAXIMUM PRICE (GMP) Proposal (CM@R)

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

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

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

Use Form 4.4 Cost Model

EXHIBIT C
TOTAL PROJECT COST (CM@R)

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

1.2 Horizontal Construction

1.2.1 A1 Labor and Burden

1.2.2 A2 Equipment (Owned and Rented)

1.2.3 A3 Materials, Supplies, and Fees

1.2.4 A4 Subcontracts

1.2.5 A5 Allowances and Contingencies

1.3 Vertical Construction

1.3.1 A1 Labor and Burden

1.3.2 A2 Equipment (Owned and Rented)

1.3.3 A3 Materials, Supplies, and Fees

1.3.4 A4 Subcontracts

1.3.5 A5 Allowances and Contingencies

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

2. Construction Costs

2.1 Labor and Burden Costs

2.1.1 Wages of construction workers directly employed by the CM@R to perform the construction of the Work at the Site or, with GILBERT's agreement, at off-site workshops.

2..1.2 Wages or salaries of the CM@R's supervisory and administrative personnel when stationed at the Site and wages, salaries and other costs of project management, preconstruction services, form design, foundation engineering, manpower planning, purchasing, estimating and data processing, whether performed at the Site or in the

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

2.1.3 Wages and salaries of the CM@R's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

2.1.4 Burden: Costs paid or incurred by the CM@R for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in subsections 2.1.1 through 2.1.3 above.

2.2 Equipment (Owned and Rented). Costs, including transportation equipment incorporated or to be incorporated in the completed construction.

2.3 Materials, Supplies, and Fees Costs

2.3.1 Costs of materials in excess of those actually installed which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to GILBERT at the completion of the Work, or at GILBERT's option, shall be sold by the CM@R, amount realized, if any, from such sales shall be credited to GILBERT as a deduction from the Cost of the Work.

2.3.2 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM@R at the Site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by the CM@R. Costs for items previously used by the CM@R shall mean fair market value.

2.3.3 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM@R at the Site, whether rented from the CM@R or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for equipment owned by the CM@R shall be at then prevailing rates.

2.3.4 Costs of removal of debris from the Site.

2.3.5 Costs of facsimiles, telegrams and long distance telephone calls, postage and delivery charges (whether originating at the Site or at the offices of the CM@R telephone service at the Site and reasonable petty cash expenses of the Site office.

2.3.6 That portion of the reasonable travel and subsistence expenses of the CM@R's personnel incurred while traveling in discharge of duties connected with the Work.

2.3.7 Fees and assessments for any permits, licenses and inspections required by the Contract Documents.

2.3.8 Fees of testing laboratories for tests required by the Contract Documents or governmental authorities.

2.3.9 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. The costs of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the CM@R resulting from such suits or claims and payments of settlements in connection therewith.

2.3.10 Deposits lost for cause other than the CM@R'S negligence.

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

2.5 Allowance and Contingencies Costs

2.5.1 Those Owner controlled costs identified as Construction Allowances associated with work items that have been specifically defined through negotiations with GILBERT and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B with associated pricing.

2.5.2 The contractor contingency belongs to the CM@R if it is needed but is returned to GILBERT if it goes unused. It reflects the incomplete nature of the drawings and specifications at the time the GMP is established and may be used to cover unanticipated costs that arise during construction. Written approval from GILBERT is required for CM@R use of this contingency.

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

3.1 General Conditions

3.1.1 Salaries and other compensation of the CM@R's personnel stationed at the CM@R's principal office or offices other than the Site, except as specifically provided in subsections 2.1.3 and 2.1.3 above.

3.1.2 Expenses of the CM@R's principal office and offices, other than the Site office.

3.1.3 Overhead and general expenses, except as may be included in Sections 1 and 2 above.

3.1.4 The capital expenses of the CM@R, including interest on capital employed for the Work.

3.1.4 Home office profit and overhead expenses.

3.1.5 Any bonuses awarded by to the CM@R to its employees or subcontractors.

3.2 **Fee.** "Fee" means the profit payable to the CM@R, which is a part of the GMP, as more fully described on Exhibit B attached hereto.

3.3 **Bonds.** "Bonds" refers to the Payment and Performance Bonds identified in Part III of the CM@R General Conditions that shall be furnished to GILBERT prior to the commencement of Construction Work on the Site.

3.4 **Insurance.** "Insurance" to be provided is described in paragraph 7 and Part III of the CM@R General Conditions.

3.5 **Sales Taxes.** "Sales Taxes" refers to those sums to be paid as a percentage of the GMP.

3.6 **Preconstruction Services.** Those services identified in this Contract that are to be performed during the design phases of the Project by the CM@R in support of the A/E and GILBERT.

3.7 **Total Project Cost.** Total Project Cost is the sum total of the GMP, Preconstruction Services, and any prior phase GMPs.

EXHIBIT D
PROJECT DESCRIPTION (CM@R)

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

EXHIBIT E
COST ESTIMATE DEVELOPMENT LOG

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

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

Project: **Layton Lakes Lift Station Force Mains Rehabilitation**
CIP No.: **WW101**
Contract No.:2016-7010-0060
Date: 8/19/15

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

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

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

1.0 CM@R - FIDUCIARY DUTY

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

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

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

2.0 CONSTRUCTION SERVICES

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

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

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

3.0 TOWN OF GILBERT PROJECT MANAGER

GILBERT has appointed a Project Manager/Construction Manager (PM/CM) to manage this Project and to represent GILBERT on the Project site. GILBERT's PM/CM will assume all duties and responsibilities and will have all rights and authority assigned to GILBERT PM/CM in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

GILBERT'S PM/CM for this Project is: John Morgan

4.0 CONTRACT TIME

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

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

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

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

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

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

5.0 LIQUIDATED AND SPECIAL DAMAGES

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

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

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

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

6.0 CONTRACT PRICE

GILBERT shall pay CM@R for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of _____ dollars and no cents ($_____) as more specifically set forth in Exhibit B – Guaranteed Maximum Price

(GMP) Proposal of the CM@R Pre-construction Services Contract (including Cost Model Form CIP4.4) and incorporated herein by reference. If the Work is to be performed in Construction Phases, the Contract Price for each Construction Phase will be set forth in the Construction Phase Notice to Proceed.

7.0 CM@R REPRESENTATIONS

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

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

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

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

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

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

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

7.7 CM@R has given GILBERT's PM/CM written notice of all conflicts, errors, or discrepancies that CM@R has discovered in the Contract Documents, and the written resolution thereof by GILBERT is acceptable to CM@R, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CM@R assumes full responsibility and liability for any conflicts, errors or discrepancies in the Contract Documents, including, but not limited to, the specifications, design and engineering for the project, for which written notice has not been provided and which a reasonable CM@R, participating in the design process as the Construction Manager at Risk would have discovered.

8.0 CONTRACT DOCUMENTS

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

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

8.2 Addenda consisting of Numbers _____ to _____ inclusive.

8.3 The project Specifications dated _____ entitled _____ Project.

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

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

8.6 The approved CPM Construction Schedule dated _____.

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

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

8.9 Notice to Proceed dated _____.

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

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

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

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

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

9.0 MISCELLANEOUS

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

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

9.3 Immigration Law Compliance Warranty:

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

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

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

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

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

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

shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by CM@R or its employees.

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

TOWN OF GILBERT

By: _____
Greg Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____

CONSTRUCTION MANAGER AT RISK

_____

By: _____

Title: _____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS FOR CONSTRUCTION MANAGER AT RISK (CM@R)

For

Project Name: Layton Lakes Lift Station Force Mains Rehabilitation
CIP No: WW101
Contract No: 2016-7010-0060
Date: 8/19/15

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PART I
GENERAL CONDITIONS

PROJECT MANAGER/CONSTRUCTION MANAGER, ARCHITECT/ENGINEER

1.1 This Project will be coordinated by a Project Manager/Construction Manager (PM/CM), who will report the progress of the Work and compliance with the Contract Documents to GILBERT'S Representative. Generally, PM/CM will (1) oversee the progress of the Work, (2) receive submittals, requests for information and other information from CM@R, (3) transmit submittals and other information as appropriate to Architect/Engineer (A/E), (4) make recommendations to GILBERT regarding Change Orders and request for extensions of time, (5) make recommendations to GILBERT regarding requests for payment, (6) maintain Project records, (7) determine Substantial and Final Completion of the Project, and (8) accomplish other tasks related to the coordination of the Work.

1.2 Generally, A/E 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 A/E 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.

1.3 PM/CM will be retained by GILBERT during the construction and until final payment to the CM@R is made. PM/CM will report to, advise and consult with GILBERT'S Representative. All instructions to CM@R shall be forwarded through PM/CM. PM/CM will have the authority to act on behalf of GILBERT only to the extent provided in the Contract Documents. CM@R shall not be relieved from CM@R's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of PM/CM in its administration of the Contract, or by inspections, tests or approvals required. In the case of termination of the Contract of PM/CM, GILBERT shall appoint a PM/CM against whom CM@R makes no reasonable objection and whose status under the Contract Documents shall be that of the former PM/CM.

PART II
GENERAL CONDITIONS

DEFINITIONS

2.1 The definitions set forth in the Pre-Construction Services Contract shall apply to these General Conditions.

PART III
GENERAL CONDITIONS

INSURANCE AND BONDS, INDEMNIFICATION, NOTICE TO PROCEED

3.1 CM@R'S INSURANCE

3.1.1 General: CM@R agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CM@R, CM@R 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.

3.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CM@R. 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 CM@R 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.

3.1.3 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, GILBERT'S Representative, PM/CM, A/E, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of these Contract Documents.

3.1.4 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 these Contract Documents.

3.1.5 Primary Insurance: CM@R'S insurance shall be primary insurance as respects performance of subject Contract and in the protection of GILBERT as an Additional Insured.

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

3.1.7 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. CM@R shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.1.8 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contains 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. CM@R shall be solely responsible for any such deductible or self insured retention amount. GILBERT, at its option, may require CM@R to secure payment or such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.1.9 Use of Subcontractors: If any Work under the Contract Documents is subcontracted in any way, CM@R shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CM@R. CM@R shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

3.1.10 Evidence of Insurance: Prior to commencing any Work under the Contract Documents, CM@R shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the Contract Documents, issued by CM@R'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 CM@R'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:

3.1.10.1 GILBERT, PM/CM, A/E, their agents, representatives, officers, directors, officials and employees are Additional 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.

3.1.10.2 CM@R'S insurance shall be primary insurance as respects performance of Contract.

3.1.10.3 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 CM@R under the Contract Documents.

3.1.10.4 Certificate shall cite 30-day advance notice cancellation provision.

3.1.10.5 Project descriptive information including:

A. Project Name

B. Project Number

C. Contract Number

3.1.11 **REQUIRED COVERAGE**

3.1.11.1 Commercial General Liability: CM@R shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $5,000,000 for each occurrence, $5,000,000 Products and Completed Operations Annual Aggregate, and a $5,000,000 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 CM@R's, 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, PM/CM, A/E, 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." CM@R, 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. CM@R 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, PM/CM, A/E, 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.

3.1.11.2 Vehicle Liability: CM@R shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CM@R'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, PM/CM, A/E, 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.

3.1.11.3 Worker's Compensation Insurance: CM@R shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CM@R'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.

3.1.11.4 Builder's "All Risk": CM@R 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 an installation waiver.

3.1.11.5 Railroad Protection Liability: If the Work involves a railroad right-of-way (as described in the Special Conditions) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the Special Conditions.

3.2 REQUIREMENT OF CONTRACT BONDS

3.2.1 Concurrently with the execution of the Contract, CM@R shall furnish GILBERT the following bonds, which shall become binding upon the Award of the Contract to CM@R:

3.2.1.1 A Performance Bond in an amount equal to the full Contract Price 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.

3.2.1.2 A Payment BOND in an amount equal to the full Contract Price solely for the protection of the claimants supplying labor or Materials to CM@R 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.

3.2.1.3 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.

3.2.1.4 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.

3.2.1.5 Subcontractor Bonds: All Subcontractors whose total Contract value exceeds $50,000.00 shall provide Payment and Performance Bonds which meet the same requirements as Bonds required for CM@R.

3.3 INDEMNIFICATION

3.3.1 To the fullest extent permitted by law, CM@R, its successors and assigns shall indemnify and hold harmless GILBERT, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CM@R or other persons employed or used by the CM@R in the performance of this Agreement. CM@R's duty to indemnify and hold harmless GILBERT, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by CM@R's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person employed by CM@R or used by CM@R in the performance of this Agreement

3.3.2 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.

3.4 SAFETY WARRANTY

3.4.1 GILBERT shall not be responsible for safety on the project site, including but not limited to, providing or assuring a safe place for the performance of the construction, methods of construction employed by the CM@R, subcontractors, suppliers or other entities or their partners, officers, agents, employees, or occupancy by any person.

3.4.2 CM@R 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. CM@R shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as PM/CM 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 CM@R at all times for the protection of persons (including employees and GILBERT representatives) and property. CM@R 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 thereunder.

3.4.3 CM@R warrants that CM@R 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 CM@R or any of CM@R'S Subcontractors are working or operating in an unsafe manner, CM@R shall immediately take full and appropriate steps to assure the safety of those working in the job site. CM@R 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, PM/CM and A/E shall not be liable for the costs incurred by CM@R if the Work is stopped for safety reasons. PM/CM, with GILBERT approval, shall issue a stop work order until the violation ceases. PM/CM shall immediately notify CM@R in writing of the reasons Work was stopped.

3.5 NOTICE TO PROCEED

CM@R 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 CM@R 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: CM@R and his superintendent, Principal Subcontractors, Representatives of principal suppliers and manufacturers as appropriate, PM/CM, A/E, Representatives of GILBERT, Others as requested by CM@R, PM/CM, GILBERT, or A/E.

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 Construction Management Plan (Developed during Preconstruction Phase services)

b. Discussion of Quality Control Plan

c. Discussion of CM@R's Initial Construction Schedule (See Section 5.1)

d. Transmittal, review, and distribution of CM@R's submittals

e. Processing applications for payment

f. Maintaining record documents

g. Critical work sequencing

h. A/E's Instruction Bulletins and Change Orders

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

j. Major equipment deliveries and priorities

k. CM@R's Safety Program

4.1.1.3 PM/CM will preside at the conference and will develop the agenda and arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CM@R shall commence Work on or before the tenth (10th) working 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) calendar days after the Notice of Award unless otherwise agreed upon in writing, or as may be specified in the Special Conditions.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CM@R 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 thereunder shall be performed in accordance with the terms of the Contract.

4.2.1.3 All Subcontractors whose total Project value exceeds $50,000.00 shall provide Payment and Performance Bonds that meet the same requirements as bonds required for CM@R.

4.2.1.4 True copies of any and all subcontracts shall be furnished to GILBERT.

4.2.1.5 The subcontracting of any part of the Work will in no way relieve CM@R of his responsibility or liability or obligation under the Contract.

4.2.1.6 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CM@R that will allow CM@R to complete the Project within the Contract Time.

4.2.2 If GILBERT or PM/CM has reasonable objection to any proposed Subcontractor, CM@R shall submit a substitute to whom GILBERT and PM/CM have no reasonable objection, and the Contract Price 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 CM@R shall make no substitution for any Subcontractor, person or entity previously selected if GILBERT or PM/CM make reasonable objection to such substitution.

4.3 CM@R'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CM@R 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 CM@R to receive and fulfill instructions from PM/CM.

4.3.2 CM@R shall supervise and direct the Work. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CM@R shall employ and

maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CM@R as CM@R'S representative at the site. The supervisor or superintendent shall have full authority to act on behalf of CM@R and all communications given to the supervisor shall be as binding as if given to CM@R. The supervisor or superintendent 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. CM@R shall be prepared in case of such emergencies from whatever cause, to do all necessary Work promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CM@R shall keep at the Site a copy of the Contract Documents and shall give PM/CM access thereto at all times.

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 CM@R shall perform in a manner acceptable to PM/CM and in full compliance with the terms of the Contract. CM@R 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 CM@R to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the Contract Documents, CM@R shall immediately notify PM/CM, who shall immediately notify A/E. A/E 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 Contract Documents or Addenda thereto shall be regarded as a part thereof and of the Contract. Anything mentioned in the Specifications and not indicated on the Plans or not mentioned in these Specifications and indicated on the Plans shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CM@R 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, CM@R 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, CM@R accepts the responsibility of constructing a watertight, weather-tight, and totally functional Project.

4.5 ERRORS AND OMISSIONS

The Plans are presumed to be correct, but CM@R shall be required to check carefully all dimensions before beginning the Work. If any errors or omissions are discovered, PM/CM shall be so notified in writing. PM/CM shall immediately notify A/E 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 A/E's Instruction Bulletins. Any such adjustments made by CM@R 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 CM@R 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.

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

4.7 CHARACTER OF WORKERS

4.7.1 CM@R 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 CM@R 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 CM@R 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 CM@R or any Subcontractor who, in the opinion of PM/CM does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of PM/CM be removed from the Work by CM@R or Subcontractor employing such persons, and shall not be employed again in any portion of the Work without the approval of PM/CM. CM@R 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 CM@R 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 CM@R'S operations shall be in accordance with the Manual on Uniform Traffic Control Devices, Latest Edition. These operations shall cause no unnecessary inconvenience to the

public and public access rights shall be considered at all times. Unless otherwise authorized in the Specifications or on a temporary basis by PM/CM, traffic shall be permitted to pass through the Work area. CM@R shall coordinate with the various agencies to include governmental, commercial and public, so that adequate services are maintained.

4.8.2 CM@R shall become familiar with and follow GILBERT'S procedures when submitting traffic control plans for approval.

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. CM@R 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 PM/CM, are required.

4.8.5 CM@R shall provide an asphalt paved surface for any temporary bypass that is in place longer than ten (10) CALENDAR days.

4.8.6 In the event of abnormal weather conditions, such as windstorms and rainstorms, CM@R shall immediately inspect his Work area and take all necessary actions to insure that public access and safety are maintained.

4.8.7 CM@R shall provide PM/CM with the emergency phone number of his representative.

4.8.8 CM@R representative shall be available for contact twenty-four (24) hours per day, seven (7) days per week.

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, CM@R shall keep the Work area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CM@R 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 PM/CM and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CM@R to comply with PM/CM's written 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 PM/CM has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CM@R 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 CM@R 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 CM@R shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CM@R 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 CM@R 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 CM@R shall be removed.

4.11.3 CM@R shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CM@R desires to obtain water from the distribution system at any point. If a fire hydrant is taken out of service by the CM@R, the CM@R shall notify GILBERT'S Water Services Department and mark the hydrant as being 'Out of Service' as required by GILBERT. Verify with GILBERT'S Water Services Department for special requirements on the use of fire hydrant water.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CM@R in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the Special Conditions. CM@R shall provide and pay for all facility layout staking, including elevations and all other Project staking.

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

4.13 BLUE STAKE

CM@R is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CM@R 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 CM@R'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. CM@R shall notify all owners of utilities when his Work is in progress. If a utility is damaged, the CM@R shall make such arrangements as are necessary to make emergency repairs, in a manner satisfactory to GILBERT.

4.14.3 If a utility is shown on the Project Plans and cannot be located by the CM@R, any Work in conflict with the utility shall be delayed until the location of the utility is confirmed by GILBERT. Costs associated with such delay will be borne by the CM@R.

4.14.4 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CM@R'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.

4.14.5 CM@R 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.

4.14.6 CM@R 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 CM@R 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 CM@R, 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 CM@R'S responsibility to locate and protect these individual or house services. If, due to CM@R'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 CM@R'S cost 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. Before blocking driveways, CM@R shall notify the property owner. CM@R shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CM@R'S Work. If it is necessary to leave an excavation open across driveways or sidewalks, CM@R 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 stations, 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 CM@R 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, CM@R 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 CM@R and hauled from the job at CM@R'S expense.

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

4.18 IRRIGATION DITCHES AND STRUCTURES

CM@R 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. CM@R 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 4.8 and shall be maintained by CM@R 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 CM@R'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CM@R 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 CM@R and his Sureties shall be liable therefore.

4.20.2 CM@R 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 PM/CM. 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.

4.20.3 In the event of abnormal weather conditions, such as windstorms and rainstorms, CM@R shall immediately inspect his Work area and take all necessary actions to insure that the project Site is protected and maintained.

4.21 METHODS AND EQUIPMENT

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

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 A/E. If CM@R desires to use a method or type of equipment other than those specified, he may make that request to PM/CM, who shall immediately forward the request to A/E. 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 CM@R will be fully responsible for producing construction work in conformity with the Specifications. If, after trial use of the substituted methods or equipment, A/E determines that the Work produced does not meet the Specifications, CM@R 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 A/E may direct. No change will be made in basis of payment of the construction items involved nor in Contract Time as result of authorizing a change in methods or equipment under these provisions. CM@R may appeal a decision of A/E under this Section to PM/CM. Any such appeal must be made in writing within forty-eight (48) hours of A/E's decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of Work from any cause whatever, CM@R shall be responsible for the protection of all Materials and equipment. CM@R 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 CM@R finds it cannot, for reasons beyond his control, complete the Work within the Contract Time as specified or as extended, he shall immediately submit a written request to PM/CM for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. Delay will only be granted if it affects the critical path of the schedule. CM@R'S plea that insufficient time was specified is not a valid reason for extension of time. If PM/CM finds that the Work was delayed because of conditions beyond the control and through no fault of CM@R, he may extend the Contract Time in such amount as the conditions justify. The extended Contract Time shall then be in full force and effect 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 _____ 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 _____ Working Days lost due to bad weather conditions.

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

4.23.4 PM/CM 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 only 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, A/E'S or PM/CM'S liability for delay from any cause shall be limited to granting a time extension to CM@R and there is no other obligation, expressed or implied, on the part of GILBERT or A/E to CM@R 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 CM@R defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within ten (10) 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 CM@R the cost of correcting such deficiencies, including compensation for A/E's and PM/CM's additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CM@R is not sufficient to cover such amount, CM@R shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CM@R 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 CM@R, 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 CM@R 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 Construction Schedule

5.1.1.1 Prior to the pre-construction meeting, CM@R shall furnish to PM/CM one (1) hard copy and one (1) copy in electronic format of an Initial Construction Schedule.

5.1.1.2 The Initial Construction Schedule shall be based on and incorporate the Contract Milestone and Completion Dates specified in the Contract Documents.

5.1.1.3 The Initial Construction Schedule shall indicate the detailed plan for the work to be completed in the first ninety (90) calendar 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) calendar days shall be shown in summary form.

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

5.1.1.5 **FOR VERTICAL PROJECTS -** The Initial Construction Schedule shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the Construction Schedule. Use of the Initial Construction Schedule for progress payments shall not exceed 30 calendar days.

5.1.1.5 **FOR HORIZONTAL PROJECTS -** The Schedule of Values used for establishing the GMP will be used as a basis for monthly progress payments.

5.1.1.6 Overall time of completion and time of completion for each milestone shown on the Initial Construction Schedule shall adhere to the times in the Special Conditions, unless an earlier (advanced) initial time of completion is requested by CM@R and agreed to by PM/CM. Any such agreement shall be formalized by a Change Order.

5.1.1.7 PM/CM will review the Initial Construction Schedule for conformance with the requirements of the Contract Documents. PM/CM will return the Initial Construction Schedule with comments within five (5) working days after receiving it from CM@R.

5.1.2 Construction Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the Notice to Proceed, CM@R shall submit a detailed proposed Construction 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 Construction Schedule shall furnish or comply with the following requirements:

a. A time scaled cost and manpower 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 PM/CM if the Project is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual working days required to perform that activity including consideration of weather impact on completion of that activity. No weather extensions will be allowed for days not shown as work days on the CPM schedule.

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 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).

5.1.2.3 CM@R shall submit to PM/CM one hard copy and one copy in electronic format of the Construction Schedule.

5.1.2.4 PM/CM will review the proposed Construction Schedule for conformance with the requirements of the Contract Documents. Within five (5) working days after receipt, PM/CM will accept the Construction Schedule or will return it with comments. If the proposed Construction Schedule is not accepted, CM@R 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. If the accepted schedule indicates the project will be completed earlier than the contract completion date, the float time generated belongs to GILBERT. GILBERT may require the CM@R to

perform additional scope of work during the float time with no additional General Conditions to the CM@R.

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 CM@R.

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 CM@R from responsibility for accomplishing all the Work in accordance with the Contract

5.1.2.7 Acceptance of the Contract Schedule will not relieve CM@R of the responsibility for accomplishing the Work in accordance with the Contract.

5.1.3 Monthly Updates

5.1.3.1 CM@R shall submit to PM/CM each month an up-to-date status report of the work. The status report shall include:

a. Monthly Cash Flow Report projected through end of the project with the baseline projected cash flow remaining unchanged for the duration of the project and actual cash flow updated on a monthly basis. Cash flow reporting shall be in a format provided by PM/CM.

b. CM@R'S estimated percentage complete for each activity not yet complete.

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

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

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

f. Identification of activities that are affected by proposed Change Orders issued during the update period.

g. 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, CM@R shall submit revision to schedule logic to conform to current status and direction.

h. Anticipated Work during the next reporting period.

i. Work accomplished during the current reporting period.

j. Identify problems and potential solutions.

5.1.3.2 PM/CM will review the updated information and meet with CM@R each week at the Project Site to determine the status of the Work. If agreement cannot be

reached on any issue, CM@R will use PM/CM's determination in the processing of the update.

5.1.3.3 CM@R will incorporate PM/CM's comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the Contract will be based on the Contract Schedule update.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly from the Contract Schedule, as determined by PM/CM, CM@R shall submit a revised schedule to PM/CM within five (5) working days 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 CM@R, after acceptance of the Contract Schedule, intend to change its plan of construction, it shall submit its requested revisions to PM/CM, 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 PM/CM, 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. PM/CM will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

5.1.5.1 CM@R shall submit two (2) copies of the following reports for the proposed Contract Schedule, Contract Schedule monthly updates, Contract Schedule revisions and recovery schedules:

5.1.5.2 **FOR 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 CM@R'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.3 **FOR 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. CM@R shall provide a CD containing the schedule files.

5.1.6 Short Interval Schedules

CM@R 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 three (3) weeks as required by PM/CM. The SIS shall include actual start/finish dates for the preceding one (1) week. Copies of the SIS shall be submitted to PM/CM at the weekly construction meeting. CM@R 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. CM@R 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 PM/CM.

5.1.8 Date of Completion

CM@R 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 CM@R 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 five (5) working days or more behind the currently updated Contract Schedule and it becomes apparent that the Work will not be completed within the Contract Time, CM@R will implement whatever steps it deems necessary to make up all lost time. If CM@R'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:

- CM@R shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of PM/CM, 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 PM/CM the backlog of work.
- In addition, PM/CM may require the CM@R 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 PM/CM finds the proposed recovery schedule unacceptable, it may require CM@R to submit a new plan. If the actions taken by CM@R or the second plan proposed are unsatisfactory, PM/CM may require the CM@R 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 CM@R to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT that CM@R is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CM@R shall submit a Daily Activity Report, including manpower and equipment activity, no later than 9:00 a.m. the following work day to PM/CM 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 CM@R fail to comply with the requirements of this Section 5.1.

5.2 A/E TO INTERPRET CONTRACT DOCUMENTS

A/E will decide all questions which may arise as to the interpretation of the Plans and Specifications. CM@R may appeal a decision of A/E made pursuant to this paragraph to PM/CM. Such appeal must be made in writing within forty-eight (48) hours of A/E'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CM@R considers any Work demanded of him to be outside the requirements of the Contract, or if he considers any instruction, ruling, or decision of PM/CM or A/E 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, CM@R 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 PM/CM or A/E. If the protest is against a demand, instruction, ruling or decision of A/E, it shall be filed with PM/CM. If the protest is against a demand, instruction, ruling or decision of PM/CM, it shall be filed with Town Clerk.

5.3.2 Upon receipt of a protest from CM@R of a decision of A/E, PM/CM shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CM@R in writing of his final decision, which shall be binding. Upon receipt of a protest from CM@R of a decision of PM/CM, GILBERT'S Representative shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CM@R in writing of his final decision, which shall be binding.

5.3.3 CM@R 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 CM@R as are necessary to adequately control the Work. No change shall be made by CM@R in any working or shop drawing after it has been accepted by A/E.

5.4.2 CM@R shall keep a current copy of the Plans and Specifications at the jobsite, and shall at all times give PM/CM access thereto. A current copy of Plans and Specifications shall include red-line drawings, all Addenda, Change Orders, A/E 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 PM/CM will furnish from time to time such additional drawings, Plans, profiles, and information as he may consider necessary for CM@R'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 A/E except by consent of A/E in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform to 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 PM/CM.

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, CM@R shall promptly notify PM/CM. PM/CM 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 CM@R shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event CM@R discovers such an error or omission, he shall immediately notify PM/CM, who shall notify A/E. PM/CM and A/E 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, CM@R shall follow the sequence of operations as set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for Contract items of Work and no additional compensation will be allowed therefore.

5.7.2 The organization of the Specifications into divisions and articles and the arrangement of drawings shall not control CM@R in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

5.8 COOPERATION BETWEEN CM@R AND OTHER 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 CM@R shall conduct his work so as not to interfere with or hinder the progress or completion of the Work being performed by other Contractors. CM@Rs/Contractors working on the same Project shall cooperate with each other as directed.

5.8.3 The CM@R 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 CM@R 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 TESTING AND INSPECTION

5.9.1 The CM@R shall obtain an independent laboratory or testing company and pay all costs of testing required by the Contract documents, including testing required by MAG, the Specifications, the Town of Gilbert, and other jurisdictional bodies. A copy of all test results shall be furnished to PM/CM in a Weekly Summary Report submitted at the weekly construction progress meeting (time and date to be set upon Contract award) for tests performed from the preceding week. At substantial completion, the CM@R shall submit a final test report containing all test results which certifies the work complies with the Specifications. This report shall be sealed by a professional engineer registered in the State of Arizona who was responsible for overseeing the testing and sampling.

5.9.2 CM@R shall furnish PM/CM with every reasonable facility for ascertaining whether the Work as performed is in accordance with the requirements and intent of the Specifications and Contract. PM/CM 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. PM/CM shall be furnished with such information and assistance by CM@R as required to conduct a complete and detailed inspection. Should any Work be covered up before acceptance or consent of PM/CM, it must, if required by PM/CM, be uncovered for examination at CM@R'S expense. The direct control shall be solely the responsibility of CM@R'S foremen and superintendent.

5.9.3 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.

5.9.4 The inspection of the Work shall not relieve CM@R 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 Special Conditions. CM@R shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CM@R 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 CM@R shall coordinate all of the Contract's operations with, and secure approval from, PM/CM before using any portion of the Site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CM@R'S Work depends on proper execution or results of Work performed by GILBERT or any separate CM@R, CM@R shall, prior to proceeding with the Work, promptly report to PM/CM any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of CM@R so to report shall constitute an acceptance of GILBERT'S or separate CM@R'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 CM@R wrongfully cause damage to the Work or property of GILBERT, or to other Work or property on the site, CM@R shall promptly remedy such damage.

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

5.13 TEST

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, CM@R shall give PM/CM timely notice of its readiness so PM/CM may observe such inspection, testing or approval. CM@R 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 CM@R and CM@R shall promptly deliver them to PM/CM.

5.14 COOPERATION BETWEEN CM@R AND HOMEOWNER'S ASSOCIATIONS

If requested by GILBERT and authorized by an adjacent Homeowner's Association (HOA), CM@R shall enter into a separate contract with the requesting HOA for paving work that includes the same terms and conditions applicable to the requesting HOA, including unit prices, as this contract.

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, PM/CM 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 Price shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CM@R 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 PM/CM 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 CM@R as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the Work involved is covered by unit prices contained in the Schedule of Values, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CM@R and PM/CM.

6.2.1.2 By mutual acceptance of a unit price not contained in the Schedule of Values, or mutual acceptance of a lump sum price. The CM@R shall furnish PM/CM 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 CM@R'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, CM@R will submit on forms acceptable to PM/CM, 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 PM/CM. Final cost for the Change in the Work shall be reflected and formalized in a Change Order.

6.2.2 Allowable direct and indirect percentages for any Change Order are given in the Cost Model.

6.2.3 Upon receipt of a proposed Change Order, CM@R shall promptly proceed with the change in the Work and advise PM/CM within five (5) days of CM@R'S agreement or disagreement with the method, if any, provided in the proposed Change Order for determining the proposed adjustment in the Contract Price or Contract Time. Failure to return the Change Order to PM/CM within seven (7) days indicates CM@R'S Agreement therewith, including adjustment in Contract Price 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 CM@R disagrees with the method for adjustment in the Contract Price, the adjustment shall be determined by PM/CM on the basis of any of the methods described in Section 6.2.1, paragraphs A-D.

6.2.5 Overhead and Profit for actual cost of work performed by the CM@R and/or his Subcontractor is given in the Cost Model.

6.2.6 If the net value of a change results in a credit from CM@R or Subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit as indicated in the Final GMP. 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 Section 6.2.1, Paragraphs C and D, CM@R shall keep and present daily, in such form as PM/CM 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 PM/CM. No costs will be allowed for time not recorded and signed the same day the work takes place. CM@R and PM/CM

shall discuss and attempt to resolve any disputed concerning CM@R'S daily records at the time the report is submitted.

6.3.2 Reconciliation: CM@R 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 PM/CM 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, A/E 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. PM/CM shall have the authority to reject Work not in conformance with the Contract Documents.

7.1.5 In the event CM@R discovers any omission from these Specifications or from the Plans, it shall be the duty of CM@R to call PM/CM's attention to apparent errors or omissions and request instructions before proceeding with the Work. PM/CM shall immediately notify A/E who shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CM@R as though contained in the original Specifications or Plans.

7.1.6 CM@R may appeal a decision of A/E made pursuant to Section 7.1 to PM/CM. Such appeal must be made in writing within forty-eight (48) hours of A/E'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 MAG Section 106.4.

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 CM@R 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 CM@R 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 CM@R shall be representative of the materials to be used. PM/CM and A/E may select samples or may require that samples be delivered to and tested at a laboratory designated by PM/CM at no additional cost to GILBERT.

7.3.5 CM@R shall prepare, review, approve all shop drawings, product data and samples required by the Contract Documents and submit to PM/CM with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of GILBERT or any separate CM@R. PM/CM shall immediately forward such shop drawings, product data and samples to A/E. CM@R shall cooperate with PM/CM and A/E in the coordination of the shop drawings, product data and samples with those of other separate CM@Rs.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CM@R represents that CM@R 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 CM@R shall:

7.3.7.1 Review each submittal and check for compliance with Contract Documents

7.3.7.2 Stamp each submittal with uniform approval stamp before submitting to PM/CM.

A. Stamp to include project name, submittal number, specification number, CM@R reviewer's name, date of submittal has been reviewed, checked, and approved for compliance with the Contract Documents.

B. PM/CM will not transmit review submittals to the A/E that do not bear CM@R'S approval stamp and will return them to the CM@R without action.

7.3.8 A/E will review and approve or take other appropriate action upon CM@R'S submittals such as shop drawings, product data and samples for conformance with the Specifications. A/E's approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.9 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.

7.4 MATERIALS FURNISHED BY GILBERT

All Materials and/or services to be furnished by GILBERT are indicated in the Special Conditions. The cost of CM@R handling and placing GILBERT-furnished Materials shall be included in the Contract price.

7.5 STORAGE OF MATERIALS

7.5.1 CM@R 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 CM@R at no cost to GILBERT. Protection of Materials and equipment stored on the site shall be the responsibility of CM@R. GILBERT reserves the right to direct CM@R to provide proper means of protection for Materials if such is deemed advisable by PM/CM; however, the exercise of or failure to exercise this right shall not be deemed to relieve CM@R of his primary responsibility for protecting the material and equipment. CM@R shall provide suitable warehouses or other adequate means of protection for such of the Materials and equipment as require storage or protection. CM@R shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. CM@R 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 CM@R, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CM@R 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 CM@R of bills of sale to establish GILBERT'S title to such Materials or equipment and certificate of insurance for storage in a bonded warehouse or facility agreeable to GILBERT.

7.6 REJECTED MATERIALS AND WORK

PM/CM 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 PM/CM. No rejected Materials, the defects of which have been subsequently corrected, shall be used unless accepted by PM/CM. If CM@R 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 CM@R.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CM@R 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 PM/CM, CM@R 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 CM@R 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. CM@R shall bear all costs of correcting such rejected Work, including compensation for the additional services of PM/CM and A/E 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, CM@R shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CM@R 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 CM@R 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 CM@R does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from PM/CM, GILBERT may remove it and may store the Materials or equipment at the expense of CM@R. If CM@R does not pay the cost of such removal and storage within ten (10) Days thereafter, GILBERT may upon ten (10) additional 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 CM@R including, but not limited to, compensation for PM/CM's and A/E'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 CM@R under the Contract shall be reduced by the deficiency. If payments then due to CM@R are insufficient to cover deficiency, CM@R shall pay the difference to GILBERT.

7.7.6 CM@R shall bear the costs of making good all Work of GILBERT or separate CM@Rs destroyed or damaged by CM@R'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 CM@R 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 CM@R to correct the Work and has no relationship to the time within which CM@R'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 CM@R'S liability with respect to CM@R'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 CM@R, GILBERT shall be entitled to recover from CM@R, 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 A/E AND PM/CM

Neither A/E's nor PM/CM'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 A/E or PM/CM to CM@R, 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 CM@R 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 Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; also all laws, ordinances, and regulations in any manner affecting the conduct of the Work, including 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 CM@R, Subcontractors and their employees and agents. CM@R'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 CM@R performs any Work knowing it to be contrary to such laws, ordinances and regulations, CM@R 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 CM@R shall also comply with applicable paragraphs in the Special Conditions.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the Contract Documents, it is the duty of CM@R to procure

all permits and licenses. There will be no charge to CM@R for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CM@R 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 CM@R 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 CM@R 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, CM@R shall suspend the Work wholly or in part for such period as may be necessary to correct the unsafe condition.

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

8.8.4 CM@R 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. CM@R shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.8.5 CM@R shall have total responsibility for the safety conditions at the Work site.

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. CM@R shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CM@R'S safety program. A copy of the agenda for the CM@R'S weekly tail gate meetings shall be submitted to PM/CM for inclusion into the weekly meeting notes.

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, CM@R 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 PM/CM. When a possible endangered or threatened species is discovered, CM@R shall stop work and report promptly to PM/CM.

8.10.3 Work shall not be resumed in the immediate area until CM@R is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CM@R 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 CM@R, Subcontractor or any person or agent employed by him shall be borne by CM@R.

8.12 NON-RESPONSIBILITY OF GILBERT

Indebtedness incurred for any cause in connection with this Work must be paid by CM@R, 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 CM@R 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

CM@R 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 CM@R 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, CM@R 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 CM@R 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 CM@R 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. CM@R 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, CM@R 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 CM@R, or if no money is due CM@R, GILBERT shall have the right to recover said sum or sums from CM@R, 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 Project and other additional GILBERT incurred losses, or expenses, due to the failure of CM@R to complete the Work within the time specified.

9.1.4 The liquidated damages amounts set within Sections 9.2.1 and 9.2.2 are fixed and agreed upon by and between CM@R 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 4.23 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 CM@R 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 4.23.

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 PM/CM 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 PM/CM as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release, nor otherwise operate to excuse, CM@R from his duty to complete the remainder of the Work within the Contract Time including liability for liquidated damages.

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 and a Final Completion Certificate is issued.

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

9.3 SPECIAL DAMAGES

The CM@R shall be responsible for all costs associated with additional time expended by PM/CM due to time extensions granted by GILBERT for the CM@R'S convenience. The costs shall be paid by the CM@R at the rate established in Form CIP4.3.5 – CM@R Construction Services Contract, Paragraph 5.2. These costs shall be paid by the CM@R at no additional cost to GILBERT.

9.4 FINAL CLEAN UP

9.4.1 At completion of the Work and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CM@R. The following list is not all inclusive, but is intended to provide a basic guideline:

9.4.1.1 **FOR VERTICAL PROJECTS**

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

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

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

D. 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.

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

9.4.1.2 **FOR HORIZONTAL PROJECTS**

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

B. 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.

9.5 RECORD DRAWINGS

9.5.1 CM@R shall provide accurate data and field notes as construction progresses, for preparation of the "Record" drawings by A/E or PM/CM. Such red-lined drawings shall reflect current changes, shall be kept on site and made available for review by PM/CM at the time the CM@R submits the monthly pay application.

9.5.2 The CM@R'S monthly progress payments will not be processed until PM/CM has reviewed the Record Drawings and found that they are updated through the payment date.

9.6 COMPLETION AND INSPECTION

9.6.1 Substantial Completion Inspection: When CM@R believes that the Work is substantially complete, he shall request in writing a Substantial Completion Inspection. Within five (5) days of the receipt of such request, PM/CM shall conduct the inspection or inform CM@R that the Work is not ready for the inspection. A Substantial Completion Inspection will be conducted when the CM@R states in writing that the construction phase Work is sufficiently complete in accordance with the Contract Documents that the Work can be utilized for the purposes it was intended without any outstanding concurrent ongoing Work at the site. A punch list will be developed during this inspection documenting incomplete or deficient work

items. If work is deemed to be substantially complete, PM/CM will issue a Certificate of Substantial Completion (Form CIP1.5.1) and attach the punch list. CM@R shall be present at the Substantial Completion Inspection.

9.6.2 Punch list: After the Substantial Completion Inspection PM/CM shall notify CM@R 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. CM@R 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 CM@R to enable him to determine what items must be corrected before final acceptance will be recommended by PM/CM. GILBERT reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by CM@R of all items on the punch list.

9.6.3 Final Inspection: When CM@R believes that the punch list items have been addressed, he shall request in writing a Final Inspection. Within five (5) days of the receipt of such request, PM/CM shall make a Final Inspection or inform CM@R that the Work is not ready for Final Inspection. CM@R shall be present at the Final Inspection. The purpose of the Final 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 during the Final Inspection it is determined that the CM@R has not completed the punch list items, and a second inspection is required, CM@R shall be charged for the cost of PM/CM, A/E and other design professionals who attend the second inspection.

9.7 FINAL ACCEPTANCE

9.7.1 After all Work under the Contract Documents has been completed, as determined by PM/CM, including Work found to be incomplete pursuant to Section 9.5, PM/CM will issue the Certificate of Final Completion (Form CIP1.5.2) and forward to GILBERT'S Representative. GILBERT will make final acceptance promptly after receiving PM/CM's recommendation by signing the Certificate of Final Completion unless GILBERT has reason to believe the Work is not ready for final acceptance.

9.7.2 Unless otherwise specified in either Section 9.2 or under Special 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 CM@R

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 Town of Gilbert Invoice Form with accompanying A.I.A. Form G-702 and G-703, May 1983 or current edition entitled "Application and Certificate for Payment", (1 copy) utilizing complete provisions provided by the form.

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, CM@R 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.

10.1.4 CM@R shall submit a cash flow projection that identifies estimated monthly payments to GILBERT based on the cost loaded schedule.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CM@R on the basis of a duly certified and approved estimate prepared by CM@R and approved by PM/CM for Work completed through the last day of the preceding calendar month. If requested by PM/CM, CM@R shall provide supporting data substantiating its corrections. The estimate will cover the Work performed by CM@R during the preceding calendar month plus the invoice cost of material suitably stored at the site of the Project if CM@R desires payment for material stored. Until final completion and final acceptance, retainage from progress payments to CM@R 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 CM@R and the remaining retention shall be five percent (5%) of each payment provided CM@R is making satisfactory progress on the Project as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The CM@R will request in writing for a reduction in retention. The partial payment shall be paid on or before thirty (30) 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 CM@R. 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 CM@R 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 CM@R'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 Schedule of Values: Not later than 7 days before the first Application for Payment, CM@R shall submit to PM/CM a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the Work. CM@R shall provide separate line items for CM@R'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CM@R shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703. If requested by PM/CM, CM@R shall provide supporting data substantiating its correctness.

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

10.3 PAYMENT OF ITEMS IN SCHEDULE OF VALUES

10.3.1 Only those items listed in the Schedule of Values are pay items.

10.3.2 Compensation for all work necessary for the completion of the project shall be included by the CM@R in the Schedule of Values for the items shown in the GMP.

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 CM@R 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 CM@R of any Contract to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CM@R 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 CM@R 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,

CM@R shall submit a request for final payment.

10.6.2 Simultaneously with CM@R'S request for final payment, CM@R shall submit the following items to PM/CM:

10.6.2.1 Red-lined record drawings.

10.6.2.2 Guarantees and 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 Special 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 and concisely detailed.

10.6.2.4 Affidavit Regarding Settlement of Claims.

10.6.2.5 Other items required by the Special Conditions.

10.6.3 Upon receipt of the submittals required in Section 10.6.2, PM/CM shall prepare a written estimate of the sum due to CM@R. This estimate shall take into account the Contract Price, as adjusted by any Change Orders, amounts already paid, and sums to be retained for incomplete Work, liquidated damages, and for any other cause under the Contract Documents. PM/CM shall prepare a statement of final inspection, stating that the work has been given a final inspection, that CM@R has submitted the required documents, setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the cost of correction of such deviations. PM/CM'S statement shall be transmitted to GILBERT along with CM@R'S request for final payment. PM/CM shall provide a copy of the statement of final inspection and PM/CM'S estimate of the sum due to CM@R.

10.6.4 If CM@R contests the estimate of sums due prepared by PM/CM, within seven (7) days following delivery to CM@R of PM/CM'S estimate of the sum due, CM@R shall file its protest in writing with Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to PM/CM'S final estimate. Failure to file a protest within the seven (7) days specified above shall constitute a waiver and acceptance by CM@R of PM/CM'S estimate.

10.6.5 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.

10.6.6 The making of final payment shall constitute a waiver of Claims by GILBERT except those arising from liens, Claims, security interests or encumbrances arising out of the Contract and unsettled; failure of the Work to comply with the requirements of the Contract Documents; or terms of special warranties required by the Contract Documents.

10.6.7 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and indentified by that payee as unsettled at the time of final Application for Payment.

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:
Project Number:
Contract Amount: $
Effective Date:
P.O. Number:
Council Approval:

Contract No:
Liquidated Damages: $ __/day
Substantial Completion Date:
Final Completion Date:
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, 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 Engineering at (480) 503-____.

Sincerely,

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._____
(Construction Manager at Risk)

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

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

_____

_____

_____

COST/TIME: Original CONTRACT SUM: $_____

Previously Authorized CHANGE ORDERS: $_____

CONTRACT Price prior to this CHANGE ORDER: $_____

CHANGE ORDER # Amount: $_____

New Contract Price: **$**_____

CONTRACT TIME will be increased by:

SUBSTANTIAL COMPLETION as of this Change Order:

Approved/Accepted by:

PM/CM: _____
(Name) (Date)

CM@R: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

Not valid until signed by both GILBERT and PM/CM. Signature of CM@R indicates acceptance, including CONTRACT PRICE and CONTRACT TIME.

CM@R agrees that the adjustment of the GMP and Contract Time reflected in this Change Order represents the entire and complete adjustment of the GMP and Contract Time for the changes set forth in this Change Order. The adjustment of the GMP 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
CM@R'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____

_____

To Town of Gilbert, Arizona
Engineering 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____.

_____
CM@R
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:

_____

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, _____, an _____ corporation, is required to execute certain documents which are necessary for the prompt and efficient execution of the corporate business;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the _____ that
(Corporate Name) (Name of Parties Authorized)
is/are authorized to execute and sign on behalf of said corporation/company 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

The above-named person(s) is/are granted the authority and duties herein referenced for the duration of the CONTRACT for this PROJECT or until express notice of revocation has been duly given in writing, whichever is the lesser period.

DATED and passed by the Board of Directors this ____ day of _____, 20____.

_____
_____
_____

(Signature of Persons Authorized to Sign) (Title) (Document No.)

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-1.01.:

TECHNICAL SPECIFICATIONS

POLICY STATEMENT NO. 2010-04

SUBJECT: Protest Policy

DATE: November 18, 2010

POLICY STATEMENT

SUBJECT: Procedures for Protest of Selections and Contract Awards for Professional Services and Construction Services for Capital Improvement Projects

WHEREAS, Arizona Revised Statutes Section 34-603 requires that the Town of Gilbert formally adopt a protest policy for certain public works projects; and

WHEREAS, the Town Council desires to formally adopt a protest policy that sets forth procedures submittal and processing protests of selections and contract awards for professional services and construction services for capital improvement projects.

NOW, THEREFORE, the following policy is hereby established:

I. Protest of Selections and Contract Awards

A. An unsuccessful proposer or bidder ("Protester") in a solicitation for professional services or construction services in a capital improvement project may protest a selection or contract award in accordance with this policy.

B. The Protester shall file the protest in writing ("Protest") with the Town Engineer within 72 hours after Gilbert issues its Notice of Apparent Low Bidder or its Notice of Recommended Selection and shall include the following information:

1. The name, address and telephone number of the Protester;

2. The signature of the Protester or its authorized representative, which authorization shall be included in the protest;

3. Capital Improvement Project Number and Contract Number;

4. A detailed statement of the legal and factual grounds of the Protest, including copies of relevant documents.

II. Town Engineer evaluation of protest.

A. The Town Engineer shall evaluate all Protests and shall issue a written recommendation to the Gilbert Town Council ("Recommendation") within 72 hours after a Protest has been filed. The Recommendation shall contain the basis for the Recommendation and a statement that the Recommendation may be appealed to the Assistant Town Manager for Development Services within 72 hours from receipt by the Protester of the Recommendation.

B. If the Town Engineer upholds the Protest, the apparent low bidder as set forth in the Notice of Apparent Low Bidder or the selected firm as set forth in the Notice of Recommended Selection (both referred to as the "Selected Party") may appeal the Recommendation pursuant to Section III below.

C. If the Town Engineer denies the Protest the Protester may appeal the Recommendation pursuant to Section III below.

D. If the Town Engineer fails to issue a Recommendation within 72 hours, the Protester may proceed as if the Town Engineer had denied the Protest.

III. Appeals of the Recommendation of Town Engineer

A. A Protester or Selected Party may appeal the Recommendation to the Assistant Town Manager for Development Services within 72 hours after the date the Recommendation is received.

B. The appeal shall be in writing and shall include the following Information:

1. The information prescribed in Section I(B) above;

2. A copy of the Recommendation; and

3. The precise factual or legal error in the Recommendation from which an appeal is made.

IV. Evaluation of Appeal by Assistant Town Manager

A. The Assistant Town Manager shall evaluate the appeal and shall render a final recommendation ("Appeal Recommendation").

B. The Assistant Town Manager shall notify the Protester and the Selected Party in writing of the Appeal Recommendation and the date of the meeting at which the Gilbert Town Council will make the final vote on award of the contract.

V. Selection and Contract Award

The Gilbert Town Council shall make the final decision on the contract award at a public meeting.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk