

**Maintenance/Repair Contract  
for Parkway Improvement District No. 07-10 Madera Parc  
Common Area Wall Repair and Painting Improvements Project**

**Project: Common Area Wall Repair and Painting Improvements**  
**Contract No.: PKID 319001093**  
**Date: TBD**

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## Maintenance/Repair Contract

This Contract made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, hereinafter designated as “Contractor”, and the Town of Gilbert, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated as “Gilbert.”

Gilbert and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### 1.0 Project Description

Contractor shall do and perform, or cause to be done and performed in accordance with this Contract, the Project entitled **Common Area Wall Repair and Painting Improvements for PKID 07-10 Madera Parc**, hereinafter referred to as “The Project” or “The Work,” in accordance with and as more fully described in the Notice of Call for Bids, Specifications, Drawings, Bid Form, Bid Security, Performance Bond, Labor and Material Bond, and Addenda thereto, if any, hereinafter referred to as “Contract Documents,” all of which are incorporated herein by reference and made a part hereof as though set forth in full. This is an improvement district project. The contract for the Work will not be executed by Gilbert until after an objection period has passed and the Town Council finds that objections, if any, are without merit. The contract shall be executed immediately thereafter and the Contractor must provide required bonds and insurance within five (5) days after receipt of notice. In the event that the Town Council finds there is merit to the objections, Gilbert may correct any error and/or rebid the Work. Funds for the Work are limited to the amount of the assessment for **Parkway Improvement District No. 07-10 Madera Parc**. Change orders shall not cause the cost of the Work to exceed the assessments available for payment of costs for the Work

### 2.0 Performance Standard

The Work must be performed and completed in accordance with all requirements of law and no Work shall be undertaken until Contractor has been issued all required permits. The Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest quality. Contractor shall check and verify all dimensions, grades and levels before commencement of performance and whenever necessary during the progress thereof.

### 3.0 Contract Time

Contractor hereby fixes the time for completion of all Work required to be within \_\_\_\_ days beginning with the day following the starting date specified in the Notice to Proceed, or by the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_. Upon failure to complete the Work within the time specified, Contractor shall pay the amount of \$280 per day for each day the Work remains unfinished as and for liquidated damages incurred by Gilbert for failure to complete the Work within the specified time.

#### **4.0 Subcontractors**

The names of subcontractors submitted at the time of the submission of the bid to Gilbert shall be assumed to be the subcontractors which the Contractor shall use for Work required to be done under the Contract Documents. The Contractor shall make no substitution for any subcontractor, person, or entity previously selected if Gilbert makes a reasonable objection to such substitution. Contractor shall not contract with any subcontractor to whom Gilbert has made a reasonable objection. Contractor shall not be required to contract with anyone to whom he has made a reasonable objection.

#### **5.0 Independent Contractor**

Contractor is an independent contractor and not an agent or employee of Gilbert. Contractor shall supervise and direct the Work to be done, using Contractor's best skill and attention. Contractor shall be solely responsible for all means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work required by the Contract Documents. Contractor shall be responsible to the subcontractors and their agents and employees, and other persons performing any of the Work under the Contract Documents.

#### **6.0 Labor and Materials**

Contractor shall provide and pay and shall insure under the requisite laws and regulations all labor, materials, equipment, tools, equipment, machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated in the Work.

#### **7.0 Taxes**

Contractor shall pay all licenses, sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether effective or subsequently applicable due to acts of jurisdictions or bodies other than Gilbert.

#### **8.0 Permits and Fees**

Contractor shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the Contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

#### **9.0 Bonds**

Concurrently with the execution of the Contract, the Contractor shall furnish Gilbert the following Bonds, which shall become binding upon the award of the Contract to the Contractor:

- 9.1 A Performance Bond: In an amount equal to the full Contract amount 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.
- 9.2 A Payment Bond: In an amount equal to the full Contract amount solely for the protection of the claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the Work provided for in such Contract.
- 9.3 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.
- 9.4 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.
- 9.5 Submittal of the required bonds as set forth in this paragraph is a condition precedent to this contract becoming effective.

## **10.0 Superintendent**

Contractor shall employ a competent Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent and be the agent of the Contractor and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

## **11.0 Progress Schedule**

Contractor, immediately after entering into the Contract, shall provide Gilbert with any requested scheduling information and a proposed Progress Schedule for performance of the Work in a form acceptable to Gilbert providing for commencement and completion of the Work within the Contract Time. Contractor shall prosecute the Work in a prompt and diligent manner and without hindering or delaying the Work of other Contractors or Subcontractors on the Project. Said Progress Schedule shall be supplemented thereafter upon request. Work shall not commence upon this Project until a written Notice to Proceed has been issued to the Contractor by Gilbert. The Notice to Proceed will be considered issued on the date it is sent to the Contractor by certified mail, telefacsimile or delivered to him in person.

## **12.0 Drawings and Samples**

Contractor shall furnish within three (3) working days following request therefore by Gilbert detailed drawings of the Work and samples of materials required for the performance or coordination of the Work. Drawings and samples shall comply with the requirements of the Contract Documents or shall be rejected.

## **13.0 Errors in the Plans**

The plans and specifications are presumed to be correct, but Contractor shall be required to check carefully all dimensions and verify all vertical and horizontal controls using the nearest benchmark before beginning the Work. If any errors or omissions are discovered, Gilbert's Representative shall be so notified in writing. Gilbert's Representative shall immediately notify the Project's Engineer, who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications and shall issue appropriate corrections. Any adjustments made by Contractor without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from an adjustment made by contractor shall be paid by Contractor at his own expense.

## **14.0 Gilbert's Right to Stop, Carry Out or Correct the Work**

If at any time during the performance of the Work it appears to Gilbert, in its sole discretion, that Contractor will not complete the Work within the Contract Time and pursuant to the Progress Schedule, or if the manner in which the Contractor carries out its obligations interferes with the ability of other contractors or workers to perform work on the same site, Gilbert shall have the sole and absolute right on seventy-two (72) hours written notice delivered to Contractor to replace Contractor by taking over the Work or procuring another to complete the Work. Such taking over shall not constitute or be construed as a waiver by Gilbert of any action, claim or demand Gilbert may have against Contractor by reason of injury or damage resulting to Gilbert because of Contractor's failure of performance hereunder. Contractor shall pay to Gilbert a sum equal to Gilbert's total cost of completing such Work, and a sum for reasonable attorneys' fees and litigation expenses in taking over and completing such Work. In no event shall any delay in performance hereunder by Contractor be excused unless, and ten to the extent only, such delay is excused by Gilbert in writing.

## **15.0 Warranty**

Contractor warrants to Gilbert that all materials and equipment furnished under this Contract will be new, and that all Work will be of good quality, free from faults and defects. Contractor further guarantees all Work and materials for a period of one year from the date of acceptance of the Project. Should any portion of the Work need replacement or repair within one year from the date of completion, the Contractor shall replace such Work at no cost to Gilbert. If Contractor fails within reasonable time to replace or repair any portion of the Work deemed to be needed, Gilbert may cause said Work to be done and Contractor agrees to pay all costs incurred therein. All Work not conforming to the Contract Documents, including substitutions

not properly approved and authorized, may be considered defective. If required by Gilbert, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**16.0 Indemnification**

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

16.2 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.

**17.0 Insurance**

17.1 The Contractor shall secure and maintain throughout the term of this Contract, the following insurance in the name of Contractor, naming Gilbert as additional insured with respect to claims which may arise out of or result from Contractor’s acts, operations or negligence or those of its subcontractors, or anyone directly or indirectly employed by any of them including officers, employees, agents or representatives for matters related to this Contract. The coverage shall be provided on an “occurrence” basis rather than a “claims made” basis, shall be provided without offset against Gilbert’s existing insurance and provide for a minimum of thirty (30) calendar days’ notice to Gilbert prior to cancellation, reduction in coverage or other substantial modification. Contractor shall provide a Certificate of Insurance which sets forth the following minimum amounts and types of coverage:

| <u>Type of Coverage</u> | <u>Amount Not Less Than</u>   |
|-------------------------|---|
| Workers’ Compensation   | Statutory   |
| Employers Liability     | \$100,000 each accident<br>\$100,000 disease each employee<br>\$500,000 disease aggregate |



**Type of Coverage**

**Amount Not Less Than**

Commercial General Liability (including contractual liability for this Contract; broad form property damage; completed operations; and explosion, collapse and underground coverage)

\$1,000,000 per occurrence  
\$2,000,000 aggregate combined single limit

Automobile Liability (including owned, hired and non-owned coverages)

\$1,000,000 combined single limit

Builders “All-risk”

Completed Value (at least 100% of the Contract)

- 17.2 Contractor shall submit to Gilbert proof of the required insurance upon executing this Contract. Such proof of insurance shall include the Project Name, Project Number and Contract Number. Contractor shall obtain the above-described insurance from insurance companies which are duly authorized to issue such policies in the State of Arizona and “Best Rated A” or better by the A.M. Best Company, or which are otherwise acceptable to Gilbert. Contractor shall maintain such insurance coverage until all the Work has been completed and the Project has been accepted by Gilbert.
- 17.3 Gilbert shall not be obligated to review any of the Contractor’s Certificates of Insurance, insurance policies or endorsements or to advise Contractor of any deficiencies in such documents and any receipt of copies or review by Gilbert of such documents shall not relieve Contractor from or be deemed a waiver of Gilbert’s right to insist on strict fulfillment of Contractor’s obligations under this paragraph.
- 17.4 The insurance coverages referenced above shall apply to all operations of Contractor related to the Project which are undertaken by the insured, subcontractors or their employees and agents during the life of this Contract. These policies shall not expire until all Work has been completed and the Project has been accepted by Gilbert. If a policy does expire during the life of the Contract, a renewal Certificate of the required coverage must be sent to Gilbert not less than thirty (30) calendar days prior to expiration date.

**18.0 Change Orders**

A change order is a written order to the Contractor signed by Gilbert’s Representative or other person designated in the Contract Documents, issued after execution of this Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. A change order signed by the Contractor indicates his agreement therewith. Funds for the Work are limited to the amount of the assessment for **Parkway Improvement District No. 07-10**. Change orders shall not cause the cost of the Work to exceed the assessments available for payment of costs for the Work.

**19.0 Disputed Work**

If, pursuant to Paragraph 18, Contractor claims changes ordered by Gilbert involve extra cost, Contractor shall nevertheless perform the same if directed to do so by Gilbert. However, to preserve Contractor's right to claim extra compensation for the disputed Work, Contractor shall, prior to proceeding with the Work, notify Gilbert in writing that Contractor is performing the same under protest. The same procedure shall prevail as to any dispute as to a deduction for omitted Work (or as the case may be, to sustain Contractor's contention as to the appropriate compensation for extra Work that is not disputed to be an "extra") -- the notice in that circumstance to be given not later than ten (10) working days after the tender of payment by Gilbert to Contractor of the reduced amount (or amount for the nondisputed "extra") as computed by Gilbert. Failing such written protest, it shall be deemed that Contractor has acquiesced to Gilbert's contention that the Work is not extra but Contract Work or that the reduction (or amount of compensation for a nondisputed "extra") is correct, as the case may be. The giving of the protest provided for above, and giving it timely, are express conditions precedent to maintaining any remedial procedure, whether arbitration or otherwise, pertaining to Contractor's claim.

## **20.0 Payments and Completion**

In consideration of the complete and timely performance of the Work, Gilbert shall pay Contractor the Contract Sum of \_\_\_\_\_ (\$\_\_\_\_\_). If the Contract Documents contain an engineer's estimate of the quantities of material required for the Work and expressly provide for an adjustment to the Contract Sum for actual quantities, the final Contract Sum will be adjusted according to actual field measurements of installed materials multiplied by the Contractor's per unit prices. All such measurements are subject to confirmation by Gilbert. In all other cases, no adjustment will be made to the Contract Sum except by approved Change Order. The terms of this paragraph shall be governed by A.R.S. § 34-221 and any amendments thereto which is hereby incorporated by reference. Upon receipt of written notice that the Work is ready for final inspection and acceptance, Gilbert's Representative shall promptly make a final inspection and, when Gilbert's Representative finds the Work acceptable under the Contract Documents, he shall promptly approve a certificate for payment stating that upon his knowledge, information and belief and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor is due and payable. Neither the final payment nor the retained percentage determined under A.R.S. § 34-221 shall become due until the Contractor submits to Gilbert all required data establishing payment or satisfaction of all Contractor's obligations.

## **21.0 Protection of Persons and Property**

Contractor at all times must take all reasonable precautions to protect the persons and property of others on or adjacent to the Project from damage, loss, or injury resulting from operations under this Contract by Contractor or any other party with whom Contractor has subcontracted. Contractor's obligation to protect shall include the duty to provide, place, and adequately maintain at or about the Project suitable and sufficient guards, lights, barricades, and enclosures. Contractor shall not disturb nor displace any protection installed by others.

Contractor'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 Gilbert, traffic shall be permitted to pass through the Work area. Contractor shall coordinate with the various agencies to include governmental, commercial and public, so that adequate services are maintained.

Contractor will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the Contractor's traffic control work. Gilbert will pay for the officers directly with no payment to the Contractor for this item. Contractor will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the Contractor fails to prosecute the work in a timely and orderly fashion, Gilbert shall notify the Contractor and reserves the right to negotiate a corresponding deductive change order with the Contractor based upon the cost of \$69/hour/officer that Gilbert will incur for the off duty officers.

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.

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

## **22.0 Governing Law**

This Contract shall be governed by the laws of the State of Arizona.

## **23.0 Successors and Assigns**

Gilbert and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of Gilbert.

## **24.0 Service of Notice**

All notices and demands required or permitted by this Contract shall be in writing and shall be deemed to have been given properly when (1) sent by Certified Mail (postage fully prepaid) to

the respective address below or to such other address as may be furnished by either party pursuant to this paragraph; (2) delivered personally to the parties to this Contract; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this paragraph, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this paragraph.

**Gilbert:**

Patrick Banger  
Town Manager  
Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296

**Contractor:**

Representative Name  
Representative Name  
Company Name  
Company Address  
Company Address

**25.0 Claims for Damages**

Should either party to the Contract suffer injury or damage to personal property because of any act or omission of the other party or of his employees, agents for whose acts he is legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages.

**26.0 Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by GILBERT or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach except as may be specifically agreed in writing.

**27.0 Time is of the Essence**

All time limits stated in the Contract Documents are of the essence. Contractor shall begin Work on the date specified in the Notice to Proceed and shall carry the Work forward expeditiously. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Gilbert or by any employee of Gilbert or by change orders in the Work or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay caused by Gilbert, or by any other cause which Gilbert determines may justify the delay, then the Contract Time shall be extended by change order for such reasonable time as Gilbert may determine. Any claim for extension of time shall be made in writing to Gilbert's

Representative not more than five (5) working days after the commencement of the delay; otherwise said claim shall be waived by Contractor. In the case of a continuing delay, only one claim is necessary. Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. This paragraph does not exclude the recovery of damages for delay by either party under the provisions of the Contract Documents.

## **28.0 Termination by Gilbert**

If the Contractor is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he fails to make prompt payment to subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of the Contract Documents, then Gilbert, upon certification by Gilbert's Representative that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and his Surety, if any, ten (10) working days written notice, terminate this Contract and take possession of the site and of all materials, equipment, tools, equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, such excess shall be paid to the Contractor; if such costs exceed the unpaid balance, the Contractor shall pay the difference to Gilbert. The amount to be paid to the Contractor or to Gilbert, as the case may be, shall be certified by Gilbert's Representative and this obligation for payment shall survive the termination of the Contract.

## **29.0 Conflict of Interest**

This Contract shall be subject to the cancellation provisions of A.R.S. § 38-511 and any amendments thereto.

## **30.0 Litigation**

Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damage claimed or portion of the amount payable under this Contract, then all litigation and collection expenses, witness fees, court costs, and attorneys fees shall be paid to the party not at fault. Nothing herein shall preclude non-binding arbitration if the parties so elect in the event of a dispute hereunder.

## **32.0 Immigration Law Compliance Warranty**

32.1 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.

- 32.2 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.
- 32.3 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).
- 32.4 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.
- 32.5 If state law is amended, the parties may modify this paragraph consistent with state law.

### **33.0 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 from or based on the violation of such, whether by Contractor or its employees.

In Witness Whereof, the parties hereto have caused this Contract to be executed, the day and year first herein written.

Town of Gilbert

By: \_\_\_\_\_  
Jenn Daniels, Mayor

Attest:

\_\_\_\_\_  
Lisa Maxwell, Town Clerk

Approved as to Form:

\_\_\_\_\_

Contractor

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

**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 the 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 the 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 the 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 the 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: PKID 07-10 Madera Parc – Common Area Wall Repair & Painting Improvements**

**Contract No: 319001093**

Contract Amount: \$

Effective Date:

P.O. Number:

Council Approval:

Project Number:

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, an updated cash flow, updated schedule and a summary of the project status.
2. A completed “Application and Certification for Payment”, on approved Gilbert format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Parks and Recreation at (480) 503-6330\_\_\_\_\_.

Sincerely,

PKID Program Manager

Acceptance of Notice

Receipt of the foregoing Notice to Proceed is hereby acknowledged by \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

**Change Order No. \_\_\_\_\_**  
**(Contractor)**

**Project: PKID 07-10 Madera Parc – Common Area Wall Repair & Painting Improvements**

Date:  
Owner: Town of Gilbert  
Project No:  
**Contract No: 319001093**  
Contractor:  
Contract Dated:  
PM/CM (Name)

Changes: The Contract is changed as follows: (Insert brief description)

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Cost/Time: Original Contract Sum: \$ \_\_\_\_\_  
Previously Authorized Change Orders: \$ \_\_\_\_\_  
Contract Sum Prior To This Change Order: \$ \_\_\_\_\_  
Change Order #    Amount: \$ \_\_\_\_\_  
**New Contract Sum:** \$ \_\_\_\_\_

Contract Time will be increased by:  
Substantial Completion as of this Change Order:

Approved/Accepted by:

|             |        |        |
|-------------|--------|--------|
| PM/CM       | _____  | _____  |
|             | (Name) | (Date) |
| Contractor: | _____  | _____  |
|             | (Name) | (Date) |
| Gilbert:    | _____  | _____  |
|             | (Name) | (Date) |

Not valid until signed by both Gilbert and/or PM/CM. Signature of Contractor indicates acceptance, including Contract Sum and Contract Time.

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

**Town of Gilbert, Arizona  
Contractor's Affidavit  
Regarding Settlement of Claims**

Project **PKID 07-10 Madera Parc – Common Area Wall Repair & Painting Improvements**

To Town of Gilbert, Arizona  
Building Department:

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

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

Signed and Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Contractor  
By \_\_\_\_\_

State of Arizona            )  
  ) ss.  
County of Maricopa        )

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

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## **Supplementary Conditions**

These Supplementary Conditions amend or supplement the Standard General Conditions of the 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

### PKID 07-10 Madera Parc FY19-20 Common Area Wall Repair & Painting April 2019

General description for FY19-20: Improvements are required to some of the wall surfaces within the community along Madera Parc Drive. Contractor shall visit the site to evaluate which spans of the wall require surface repair.

This bid includes surface repair and paint for a portion of the common wall surfaces shown on the Wall Plans as provided. The primary bid is for *only* the portions of the walls that require surface repair. Primary bid is to paint the surface repaired walls from pilaster to pilaster to avoid “patched” look. Contractor to provide bid add alternate to paint entire wall. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:

- 1) **BID INSTRUCTIONS; CONTRACTOR SHALL PERFORM AND PROVIDE THE FOLLOWING:**
  - Contractor shall visit site to evaluate which spans of the walls require surface repair.
  - *PRIMARY BID* shall be the surface repair of the walls shown in this plan set and as described herein only. *PRIMARY BID* shall include paint for the spans that required repair only.
  - *BID ADD ALTERNATE*; Contractor shall provide a bid alternate to paint the entire wall shown on this plan set.
  - Note that lengths as shown are provided for reference only. Contractor is responsible for visiting site to calculate actual lengths. The Town of Gilbert expects that the bid will ensure surface repair of only walls that 1) have peeling stucco or require filler; 2) that are a part of this plan set; and that they will be repaired as described below.
  
- 2) **ALL WALL TYPES; CONTRACTOR SHALL PROVIDE THE FOLLOWING FOR THE SPANS OF WALL ONLY THAT REQUIRE SURFACE REPAIR:**
  - 2’ from edge of wall, pull back decomposed granite prior to wall maintenance work. After wall maintenance work has been completed and approved by the Town of Gilbert, replace decomposed granite back to the edge of the wall.
  - Trim back all homeowner vegetation/ trees that are overhanging wall. Trimming methodology shall be approved by the Town of Gilbert prior to commencing work.
  - Trim back all common area vegetation that is impeding wall maintenance work. Trimming methodology shall be approved by the Town of Gilbert prior to commencing work.
  - Caulk/ fill all cracks that are larger than hairline in size so no cracks are visible at completion.
  - Wall locations/ types are being shown on the Wall Maintenance Bid Documents for reference only. Actual quantity of work shall be verified on site prior to bid.
  - The contractor shall furnish all material necessary to complete the work as shown on the plans.



3) **STUCCO WALLS THAT REQUIRE SURFACE REPAIR; CONTRACTOR SHALL BID THE FOLLOWING:**

- Power wash entire wall surface.
- Remove stucco where it is peeling away from the CMU block surface.
- Apply Dunn Edwards or Sherwin Williams moisture barrier where CMU block is exposed. Substitutions are not permitted.
- Apply stucco to match existing where CMU block is exposed.
- Apply two coats of paint to repaired wall. Paint to be Dunn Edwards, or Sherwin Williams; substitutions are not permitted. Paint shall not be altered in any way or watered down. Color to match the existing stucco color. Contractor shall provide an 8' long sample color for approval by the Town of Gilbert prior to painting the entire wall.

4) **INTEGRAL COLOR (INTERIOR) WALLS THAT REQUIRE SURFACE REPAIR; CONTRACTOR SHALL BID THE FOLLOWING:**

- Power wash entire wall surface.
- Apply Dunn Edwards or Sherwin Williams block fill. Substitutions are not permitted.
- Apply two coats of paint to repaired wall. Paint to be Dunn Edwards, or Sherwin Williams; substitutions are not permitted. Paint shall not be altered in any way or watered down. Color to match the existing stucco color. Contractor shall provide an 8' long sample color for approval by the Town of Gilbert prior to painting the entire wall.