

ARCHITECTURAL/ENGINEERING (A/E) SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____, 20____, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as “GILBERT” and _____, hereinafter referred to as the “A/E.”

FOR THE PURPOSE of providing professional architectural or engineering services for the Town of Gilbert on the _____ project, hereinafter referred to as the “Project,” GILBERT and A/E do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

- 1.1 Retention of the A/E: In consideration of the mutual promises contained in this Agreement (“Services”), GILBERT engages the A/E to render professional services set forth herein, in accordance with all the terms and conditions contained in this Agreement.
- 1.2 Scope of Services: The A/E shall do, perform and carry out in a satisfactory and proper manner, as determined by GILBERT, the Services set forth in this Agreement, including all exhibits (“Services”). The specific scope of work for this Project is set forth in Exhibit A. At a minimum, construction documents shall conform to the following standards: (i) all plans (of the same type) shall be drawn at the same scale, (ii) the correct information shall be shown the least number of times, (iii) all plans shall have the same orientation, (iv) consistent terminology shall be used between the plans and specifications, (v) vague notes (such as “see architectural” or “see structural”) shall be avoided and cross references shall be specific, (vi) match line locations shall be consistent in all descriptions, (vii) wall sections on the same sheet shall be shown at relative elevations to each other and (viii) references to “by others” shall be avoided and specific responsibilities shall be set forth. Construction documents shall satisfy all applicable standards of the industry for complete documents necessary to construct a fully operational and functional facility. A/E shall take measures necessary to comply with this requirement prior to final submittal to GILBERT. Incomplete items shall be completed by the A/E at its cost.
- 1.3 Responsibility of the A/E
 - 1.3.1 A/E hereby agrees that the specifications and Contract Documents prepared by A/E will fulfill the purposes of the Project, shall meet all applicable code requirements and shall comply with applicable laws and regulations. In addition, and not as a limitation on the foregoing, such specifications and contract documents and all other documents prepared by A/E shall be prepared in accordance with professional architectural or engineering standards, as applicable. Any review or approval of said specifications and Contract Documents does not diminish these requirements.
 - 1.3.2 GILBERT’s construction budget for this Project is \$1,145,000. A/E shall tour the Project site and become familiar with existing conditions, including utilities, prior to commencing the Services and notify GILBERT of any constraints associated with the Project site. During design, A/E shall maintain cost controls to deliver the Project

within the construction budget. A/E shall complete the Schematic, Design Development, and Construction Documents, such that construction cost of the Project designed by A/E will not exceed the construction budget and shall not proceed from one phase to another unless the budget for the phase is in compliance with the construction budget or any approved revised construction budget. If at any time during the design of the Project it appears the cost of construction may exceed the construction budget, A/E shall immediately notify GILBERT. If the construction budget is exceeded, A/E shall value engineer the Project at no additional cost to GILBERT. As used herein, “cost of construction” shall mean the total cost or estimated cost to GILBERT of all elements of the Project designed or specified by A/E, but does not include the compensation of the A/E and the A/E’s subcontractor or consultants.

- 1.3.3 If GILBERT retains a Construction Manager for the Project, A/E shall cooperate with the construction manager during the design phase in the performance of constructability reviews and value engineering studies. A/E shall incorporate the construction manager’s comments into the construction documents at no additional cost to GILBERT; provided however, that if A/E believes such comments should not be incorporated, A/E shall notify the construction manager of the reason the comments were not incorporated. Nothing in this paragraph shall authorize the construction manager to design the Project and A/E shall remain solely responsible for the design of the Project.
- 1.3.4 A/E shall perform the Services under this Agreement with the assistance of Computer Aided Design Drafting (CADD) Technology. A/E shall deliver to GILBERT, on request, the electronic format and the name of the supplier of the software/hardware necessary to use the design file. In order to document exactly what CADD information was given to GILBERT, A/E and GILBERT shall each sign a “hard” copy of reproducible documents that depict this information at that time. GILBERT agrees to release A/E from all liability, damages, and/or for claims that arise due to any changes made to this information subsequent to it being given to GILBERT.
- 1.3.5 A/E shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.
- 1.3.6 A/E shall designate _____ as Project Manager and all communications shall be directed to him/her. Key A/E Personnel are set forth in Exhibit B. “Key Personnel” includes the A/E employee who will place his/her license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Project. Prior to changing such designation A/E shall first make a written request to and obtain the approval of GILBERT.
- 1.3.7 A/E's subcontracts are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of Subcontractors on Exhibit B, either by adding, deleting or changing subcontractors, shall require the written consent of GILBERT.
- 1.3.8 A/E shall obtain its own legal, insurance and financial advice regarding A/E's legal, insurance and financial obligations under this Agreement.
- 1.3.9 A/E shall provide regular reports on the progress of the Services and the design budget to GILBERT or, if a separate Construction Manager is retained by GILBERT, then such

reports shall be provided to the Construction Manager. A/E shall coordinate its activities with GILBERT’s representative and Construction Manager, if any.

1.4 Responsibility of GILBERT

- 1.4.1 GILBERT shall cooperate with the A/E by placing at his/her disposal all available information concerning the site of the Project, including all previous plans, drawings, specifications, and design and construction standards; assistance in obtaining necessary access to public and private lands; legal, accounting, and necessary permits and approval of governmental authorities or other individuals. GILBERT agrees to obtain its own legal, insurance and financial advice GILBERT may require for the Project.
- 1.4.2 GILBERT shall provide A/E with the budget for the Project in order that preparation of the Contract Documents will be consistent with such budget.
- 1.4.3 GILBERT shall provide A/E with any technical requirements of GILBERT, which shall be incorporated into the specifications and Contract Documents.
- 1.4.4 GILBERT designates Leslie Bubke, P.E. as its Project Representative. All communications from GILBERT to Project Manager/Construction Manager (PM/CM), the architect or engineering firm and the construction contractor (“Construction Contractor”) shall be directed to the Project Representative.

2. CONTRACT TIME AND CONTRACT SUM

2.1 Contract Time: The Contract Time and any applicable schedule of Services are set forth in Exhibit C.

2.2 Contract Sum: The Basis of Compensation to A/E for Services rendered under this agreement is set forth in Exhibit D and as follows:

- 2.2.1 A fee for all approved project labor not to exceed _____ dollars (\$_____). The labor hours and fee breakdown is indicated in Exhibit D. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.
- 2.2.2 A fee for all approved project expenses not to exceed _____ dollars (\$_____). Allowable reimbursable expenses are indicated in Exhibit D. A/E will not exceed the reimbursable expenses allowance of each line item without prior written authorization.
- 2.2.3 The total cost to GILBERT for the Services described in this Agreement shall not exceed _____ dollars (\$_____) (sum of labor and expenses) without the written agreement of GILBERT.

2.3 Method of Payment: Method of payment shall be set forth in Exhibit D. Payment to be made by GILBERT to A/E for the cost of providing services will be based on monthly invoices which will set forth the hours actually worked during the billing period. The billing rates indicated in Exhibit D-1 will be applied against the actual hours for each position to arrive at the total fee

for each month. Reimbursable expenses incurred during the billing period and during previous billing periods and not yet invoiced will be submitted for payment on the monthly invoice along with expense receipts and other acceptable back-up documentation. All payment requests shall be certified by the A/E's Project Manager and shall be accompanied by a progress report indicating the work completed during the previous month(s), including the project progress to date by tasks as a percentage (%) of the total of each individual project task. All invoices shall be for Services completed.

3. CHANGES TO THE SCOPE OF SERVICES

3.1 Change Orders: GILBERT may, at any time, by written change order, make changes in the Scope of Work. A form of change order is attached hereto as Exhibit E. If A/E believes a change in the Scope of Work has been ordered, A/E shall submit a request for a change order in writing within ten (10) days from the date of receipt by A/E of notice of the change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by A/E will be allowed by GILBERT except as provided herein nor shall A/E provide any services or furnish any materials not covered by this Agreement unless GILBERT first approves in writing.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

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

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

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

4.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement are satisfactorily

performed, completed and formally accepted by GILBERT, unless specified otherwise in this Agreement.

- 4.5 Primary Insurance: A/E's insurance shall be primary insurance. All insurance, except Workers' Compensation and Professional Liability, shall provide protection of GILBERT as an Additional Insured.
- 4.6 Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the Services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 4.7 Waiver: All policies, except Workers' Compensation Insurance and Professional Liability, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representative, officials, directors, officers, and employees for any claims arising out of the Services of A/E. A/E shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- 4.8 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage, which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to GILBERT. A/E shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require A/E to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 4.9 Use of Subcontractors: If any Services under this Agreement are subcontracted in any way, A/E shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and A/E. A/E shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 4.10 Evidence of Insurance: Prior to commencing any Services under this Agreement, A/E shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by A/E's Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Acceptance of and reliance by GILBERT on a Certificate of Insurance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to the Town Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be A/E'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:

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

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

4.10.2 A/E's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 All policies, except Workers' Compensation and Professional Liability, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of Services performed by A/E under this Agreement.

4.10.4 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

4.10.5 Project descriptive information including:

- A. Project Name: Advanced Traffic Management System – Phase IV
- B. Project Number: TS132
- C. Contract Number: 2013-4106-0241

4.11 Required Coverage

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

4.11.2 Professional Liability: A/E shall maintain Professional Liability insurance covering errors and admissions arising out of the Services performed by A/E, or anyone

employed by A/E, or anyone for whose acts, mistakes, errors and omissions A/E is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claims and \$2,000,000 all claims. Professional Liability coverage specifically for Architects, Engineers and Surveyors shall contain contractual liability insurance covering the contractual obligations of this Agreement. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and A/E shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

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

4.11.4 Workers’ Compensation Insurance: A/E shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of A/E’s employees engaged in the performance Services under this Agreement and shall also maintain Employer Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. INDEMNIFICATION

5.1 To the fullest extent permitted by law, A/E, 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 A/E or other persons employed or used by the A/E in the performance of this Agreement. A/E’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 A/E’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 A/E or used by A/E in the performance of this Agreement.

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

6. TERMINATION OF THIS AGREEMENT

- 6.1 Termination: GILBERT may, by written notice to the A/E, terminate this Agreement in whole or in part with seven (7) days notice, either for GILBERT's convenience or because of the failure of the A/E to fulfill his contract obligations. Upon receipt of such notice, the A/E shall: (1) immediately discontinue all Services affected (unless the notice directs otherwise), and (2) deliver to GILBERT copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the A/E in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the A/E in the event of substantial failure by GILBERT to fulfill its obligations.
- 6.2 Payment to A/E Upon Termination: If the Agreement is terminated, GILBERT shall pay the A/E for the Services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

7. ASSURANCES

- 7.1 Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the A/E for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the A/E of the A/E's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 7.2 Examination of Records: The A/E agrees that duly authorized representatives of GILBERT shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the A/E involving transactions related to this Agreement.
- 7.3 Ownership of Document and Other Data: Original documents, such as tracings, plans, specifications, maps, basic survey notices and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement or any change order are and will remain the property of GILBERT unless otherwise agreed to by both parties. GILBERT may use such documents for other purposes without further compensation to the A/E; however, any reuse without written verification or adaptation by A/E for the specific purpose intended will be at GILBERT's sole risk and without liability or legal exposure to A/E. Any verification or adaptation of the documents by A/E for other purposes than contemplated herein will entitle A/E to further compensation as agreed upon between the parties.
- 7.4 Litigation: Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

- 7.5 Independent Contractor: A/E shall be an independent contractor and not an agent of GILBERT and shall direct and supervise the Services required by this Agreement and shall be responsible for all means, methods, techniques, sequences and proceedings associated with the Services and shall be responsible for the acts and omissions of its employees, agents and other persons performing any of the Services under a contract with the A/E.
- 7.6 Exclusive Use of Services – Confidentiality: The services agreed to be provided by A/E within this Agreement are for the exclusive use of GILBERT and A/E shall not engage in conflict of interest nor appropriate GILBERT work product or information for the benefit of any third parties without GILBERT consent.
- 7.7 Sole Agreement: There are no understandings or agreements except as herein expressly stated.
- 7.8 Caption: Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.
- 7.9 Time is of the Essence: The timely completion of the Project is of critical importance to the economic circumstances of GILBERT.
- 7.10 Controlling Law: This Agreement is to be governed by the laws of the State of Arizona.
- 7.11 Immigration Law Compliance Warranty:
- 7.11.1 As required by A.R.S. § 41-4401, A/E hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A/E further warrants that after hiring an employee, A/E verifies the employment eligibility of the employee through the E-Verify program.
- 7.11.2 If A/E uses any subcontractors in performance of the Services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.
- 7.11.3 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. A/E 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. A/E shall not be deemed in material breach of this Contract if the A/E 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).
- 7.11.4 Gilbert retains the legal right to inspect the papers of any A/E or subcontractor employee who works on the Contract to ensure that the A/E or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

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

7.12 Equal Treatment of Workers: A/E shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. A/E 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”). A/E shall protect and indemnify GILBERT and its representatives against any claim or liability arising from or based on the violation of such, whether by A/E or its employees.

7.13 Notices: Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

GILBERT:

A/E:

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

Representative Name
Representative Title
Company Name
Company Address
Company Address

The address may be changed from time to time by either party by serving notices as provided above.

8. SUSPENSION OF WORK

8.1 Order to Suspend: GILBERT may order the A/E, in writing, to suspend all or any part of the Services for such period of time as may be determined to be appropriate for the convenience of GILBERT.

8.2 Adjustment to Contract Sum: If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of GILBERT in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance was suspended or delayed for any other cause, including the fault or negligence of the A/E, or (2) for which a change order is executed.

9. INTERESTS AND BENEFITS

- 9.1 Conflict of Interest of A/E: The A/E covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. The A/E further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
- 9.2 Interest of GILBERT Members and Others: No officer, member or employee of GILBERT and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his/her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.
- 9.3 Non-Solicitation: A/E agrees that it has not employed or retained any company or person, other than a bona fide employee working for A/E, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this clause, GILBERT may terminate this Agreement without liability, or, in its discretion, deduct from the Contract Sum, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingency fee.
- 9.4 Notice Regarding A.R.S. § 38-511: Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any Agreement it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of GILBERT is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. In the event GILBERT elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to the A/E.

10. ASSIGNABILITY

The A/E shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of GILBERT thereto; provided, however, that claims for money due or to become due to the A/E from GILBERT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to GILBERT.

IN WITNESS WHEREOF, GILBERT and the A/E 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:

ARCHITECT/ENGINEER

By: _____
Title: _____