

**TOWN OF GILBERT**

**ADDENDUM NO. 1**

**TO REQUEST FOR QUALIFICATIONS FOR  
GENERAL BUILDING AND FACILITIES SERVICES  
JOB ORDER CONTRACT**

**Project Name: Municipal Facilities JOC**  
**CIP Project Number: MF2401**  
**Contract Number: 325000 (171, 172, 173)**

**November 7, 2024**

This Addendum contains a total of 36 pages.

1. Clarification on the JOC Contract Pricing:

Form *CIP5.1.5 JOC Pro-Forma Contract* that was originally issued with the RFQ Bid Documents contained discrepant language about the JOC Contract Pricing, referring to a Unit Price Book and Coefficient throughout the Contract. This is incorrect. Cost proposals shall be in the form of a Lump Sum or Guaranteed Maximum Price (GMP) developed using the hourly rates agreed upon during contract negotiations and the JOC markups established in Appendix B: JOC Pricing Matrix.

During the terms of the JOC, Work is performed as a series of individual Job Orders. Each Job Order, initiated by the Town, is defined cooperatively by the Town and Job Order Contractor. A scope, schedule and price are agreed upon, and the JOC Contractor is directed to proceed with the work. Upon request of the Town, Job Order cost proposals may be submitted in the form of a Lump Sum or as a Guaranteed Maximum Price (GMP). Cost proposals shall be developed utilizing the hourly rates agreed upon during contract negotiations and the JOC markups established in Appendix B: JOC Pricing Matrix.

Form *CIP5.1.5 JOC Pro-Forma Contract* has been revised and uploaded to the Bid Documents in Trimble Unity Construct. Refer to revised Section 3.2, Section 23.1 and Appendix B: JOC Pricing Matrix.

**Firms shall acknowledge receipt of Addendum No. 1 in the cover letter of their 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 Statement Of Qualifications being declared non-responsive.**

End of Addendum No. 1

**JOB-ORDER-CONTRACT**

**Project:** General Building and Facilities Job Order Contract  
**CIP No.:** MF2401  
**Contract No.:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

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**JOB ORDER CONTRACTING  
CONTRACT**

THIS CONTRACT, entered into and made effective the \_\_\_\_\_ by and between the Town of Gilbert, Arizona, a municipal corporation of the State of Arizona ("Gilbert") and \_\_\_\_\_, an Arizona corporation. ("Job Order Contractor").

IN CONSIDERATION of the mutual promises and covenants hereinafter contained in this Contract by these presents do agree, as follows:

**1.0 DEFINITIONS**

1.1 "Contract" means the following items and documents: (i) Job Orders; (ii) Change Orders; (iii) Contract Amendments; (iv) this Job-Order-Contract, including all exhibits and attachments; (v) JOC Contractor Statement of Qualifications.

1.2 "Duration of the Work" means the number of Days from a Job Order notice to proceed to Substantial Completion.

1.3 "Engineer" means the architectural or engineering firm designated by Gilbert to prepare plans and specifications for the Work and perform other design or submittal services as required by Gilbert. If an architectural or engineering firm is not designated, the Engineer's duties will be performed by Gilbert's Authorized Representative.

1.4 "Final Completion" means the completion of a Job Order in accordance with this Contract.

1.5 "Gilbert" means the Town of Gilbert.

1.6 "Gilbert's Authorized Representative" means the firm or person or their properly authorized assistants designated by Gilbert to oversee the Work.

1.7 "Job Order" means a specific written agreement between the Gilbert and the Job Order Contractor for Work to be performed under this Contract, including a scope of Work, Job Order Price and Duration of the Work.

1.8 "Job-Order Contractor" or "JOC Contactor" means the firm set forth in the introductory paragraph selected by the Town to provide or procure construction and design services as detailed in this Job Order Contract.

1.9 "Job Order Price" means the sum of the maximum cost of the Work for a Job Order, the JOC Contractor's construction fee, general conditions fee, taxes, bonds, insurance costs,. The approved Job Order Price will be made part of this JOC by executing a Job Order.

1.10 "Job Order Contractor's Representative" means Job Order Contractor's duly authorized representative specifically authorized to act for Job Order Contractor by executing the Contract and any

modifications thereto. Job Order Contractor's duties include administration of the Contract on behalf of Job Order Contractor and performance of the Work.

1.11 "Site" means the land or premises on which Work on a Job Order is located as set forth in a Job Order.

1.12 "Subcontract" as used herein means any Contract including purchase orders (other than one involving an employer-employee relationship) entered into by Job Order Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

1.13 "Substantial Completion" means when a Job Order, or an agreed upon portion of a Job Order, is sufficiently complete so Gilbert can occupy and use the Site or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by Gilbert Fire and Rescue Services Department; (ii) elevator permit; (iii) all systems in place, functional, and displayed to Gilbert or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by all consulting engineers; (vi) draft operations and maintenance manuals and record documents reviewed and accepted by Gilbert; (vii) Gilbert operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning.

1.14 "Work" means any or all of the services, equipment and/or materials that are required in any Job Order and all labor, services, incidental expenses and material necessary or incidental thereto.

## **2.0 WORK TO BE PERFORMED**

2.1 In response to Job Orders that may be mutually agreed upon and issued by Gilbert, Job Order Contractor shall furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design and construction for the Work described in each Job Order. The Work shall be performed in accordance with the requirements of this Contract, the Job Order and the following:

- Appendix A General Description of Services Required
- Appendix B JOC Pricing Matrix
- Appendix C Job Order Form

2.2 Job Order Contractor shall submit, for Gilbert approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan shall address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Gilbert's inspectors.

2.3 Job Order Contractor's duties include the preparation of shop drawings or sketches necessary to permit orderly construction of Gilbert's design plans. Job Order Contractor agrees to provide detailed design drawings and plans when requested by Gilbert.

2.4 This is an indefinite quantity type Contract for the performance of a broad range of services as described in Appendix A on an as-needed basis as may be required by Gilbert. Appendix B contains hourly rates and markup percentages that will be used in preparation of cost proposals of each Job Order.

2.5 This Contract is the entire agreement of Gilbert and Job Order Contractor. The terms and conditions which will govern any Work shall be set forth in a Job Order issued by Gilbert and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Gilbert to issue any Job Order, nor requiring Job Order Contractor to accept same, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

2.6 Gilbert reserves the right to undertake or award Contracts for the performance of the same or similar type work contemplated herein, and to do so shall not breach or otherwise violate the Contract.

2.7 Upon written approval of the Job Order Contractor and Gilbert, this Contract may be tendered for use by other municipalities and government agencies.

2.8 Job Order Contractor agrees and acknowledges that it shall maintain, at its sole cost and expense, one or more licenses to use the Gilbert Project Management Platform, e-Builder. Gilbert reserves the right during the term of this Contract to require that Job Order Contractor make any or all submittals or deliveries required of Job Order Contractor under this Contract via e-Builder.

### **3.0 JOB ORDERS**

3.1 Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Gilbert. Job Orders shall be in accordance with the requirements specified in Appendix A, Scope of Work, and will set forth, with the necessary particularity, the following:

- a. Project number
- b. Contractor's name
- c. Project Name
- d. Contract Number
- e. Job Order number
- f. The specific Work and applicable technical specifications and/or drawings;
- g. Location of Work
- h. Total price for Job Order
- i. Completion Date
- j. Submittal requirements;
- k. Gilbert's Authorized Representative who will accept the completed Work;
- l. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order
- m. Such other information as may be necessary to perform the Work.

3.2 Job Orders shall be issued as follows:

- a. When Gilbert determines Work is needed, Gilbert shall notify Job Order Contractor of an existing requirement.
- b. Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed, by visiting the proposed site in the Job Order Contractor of Gilbert, or establishing contact with Gilbert to further define the scope of the requirement.
- c. After mutual agreement on the scope of the individual Job Order, Job Order Contractor shall then prepare a proposal in the form of a Lump Sum or Guaranteed Maximum Price (GMP) with such sufficient level of cost detail as Gilbert may require (including without limitation all fees, material costs, equipment costs, subcontractor costs, other direct and indirect costs, insurance and bond premiums, allowances, and contingencies). GMP cost proposals shall be “open book” with full transparency provided to Gilbert and any allowance savings will be returned to Gilbert at the end of the Job Order. Cost proposals shall be developed utilizing the hourly rates agreed upon during contract negotiations and the JOC markups established in Appendix B: JOC Pricing Matrix. Appendix B contains hourly rates and markup percentages that will be used in preparation of cost proposals of each Job Order.
- d. Job Order Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.
- e. Upon receipt of Job Order Contractor's proposal, Gilbert will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.
- f. If Gilbert does not issue a Job Order after receipt of Job Order Contractor's proposal, Gilbert is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal.

3.3 Job Orders may be amended by Gilbert in the same manner as they are issued.

3.4 The minimum Job Order value is \$0.00 unless waived by Job Order Contractor. The maximum Job Order value is \$5,000,000.00. The total amount for the JOC shall not exceed \$20,000,000 per year.

#### **4.0 SPECIFICATIONS AND DRAWINGS**

4.1 Job Order Contractor shall keep on the Work site a copy of the drawings and/or specifications and shall at all times give Gilbert’s Authorized Representative access thereto. Anything set forth in the specifications and not shown on the drawings, or shown on the drawings and not set forth in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Gilbert’s Authorized Representative, who shall promptly submit them to Engineer for a determination in writing. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense.



4.2 Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Gilbert or Gilbert's Authorized Representative is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Gilbert or Gilbert's Authorized Representative, unless otherwise expressly stated.

4.3 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

4.4 Shop drawings means drawings submitted to Gilbert's Authorized Representative by Job Order Contractor showing in detail:

- a. The proposed fabrication and assembly of structural elements and,
- b. The installation (i.e., form, fit and attachment details) of materials or equipment.
- c. The construction and detailing of elements of the Work.

It includes sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Gilbert may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

4.5 Job Order Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Engineer through Gilbert's Authorized Representative without evidence of Job Order Contractor's approval may be returned for resubmission. Engineer will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Engineer's reasons therefore. Any work done before such approval shall be at Job Order Contractor's risk. Approval by Engineer shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with Section 4.6 below.

4.6 If shop drawings show variations from the Job Order requirements, Job Order Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Engineer approves any such variation, Gilbert shall issue an appropriate Contract modification, except that, if the variation results in an increase in price, approval must be obtained from Gilbert. If the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

4.7 Job Order Contractor shall submit to Gilbert's Authorized Representative for approval an appropriate number of copies of all shop drawings as called for under the various headings of these

specifications. Sets of all shop drawings will be retained by Gilbert and one set will be returned to Job Order Contractor.

4.8 Omissions from the drawings or specifications or the mis-description of details of work which are necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

4.9 Job Order Contractor shall check all Gilbert furnished drawings immediately upon receipt and shall promptly notify Gilbert's Authorized Representative of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

## **5.0 USE OF SPECIFICATIONS, DRAWINGS AND NOTES**

5.1 All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Gilbert and may be used by Gilbert without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Gilbert uses them in any manner whatsoever. In addition, Gilbert agrees to hold Job Order Contractor harmless to the extent permitted by law from any legal liability arising out of the Gilbert's use of such materials.

## **6.0 PERMITS AND RESPONSIBILITIES**

6.1 Job Order Contractor shall be responsible for processing of drawings for: approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and, for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Gilbert will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the Contract.

## **7.0 MATERIAL AND WORKMANSHIP**

7.1 All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the

Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Gilbert's Authorized Representative, is equal to that named in the specifications.

7.2 Job Order Contractor shall obtain Gilbert's Authorized Representative's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval Job Order Contractor shall furnish to Gilbert's Authorized Representative the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Contract or by Gilbert's Authorized Representative, Job Order Contractor shall also obtain Gilbert's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

7.3 All work under the Contract shall be performed in a skillful and workmanlike manner.

## **8.0 TESTING OF MATERIALS**

8.1 Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

## **9.0 LAYOUT OF WORK**

9.1 Job Order Contractor shall lay out its work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Gilbert's Authorized Representative.

## **10.0 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

10.1 Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. The conformation and conditions of the ground; and

e. The character of equipment and facilities needed preliminary to and during work performance.

10.2 Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Gilbert, as well as from the drawings and specifications made a part of this Contract.

## **11.0 DIFFERING SITE CONDITIONS**

11.1 Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Gilbert's Authorized Representative of:

a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or

b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

11.2 Gilbert's Authorized Representative will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

11.3 No request by Job Order Contractor for an equitable adjustment to the Job Order under this section shall be allowed, unless Job Order Contractor has given the written notice required.

## **12.0 CONTRACT TERM**

12.1 The term of the Contract shall be one year with four additional one year renewal options and shall commence on the date it was executed by both parties and the initial term shall terminate or else in accordance with the terms and conditions of this Contract. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order. The Gilbert reserves the right to extend this contract for two additional one year periods. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

## **13.0 COMPENSATION**

13.1 Upon Final Completion, as full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract, Gilbert shall pay Job Order Contractor the amounts specified in the individual Job Orders.

## **14.0 INVOICING AND PAYMENTS**

14.1 Pay applications shall be submitted to Gilbert's Authorized Representative, who will make a recommendation for payment to Gilbert. Gilbert shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Gilbert, on estimates of Work completed submitted by the Job Order Contractor and approved by Gilbert. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Gilbert will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

14.2 All material and work covered by progress payments made shall, at the time of payment, become the sole property of Gilbert, but this provision shall not be construed as:

- a. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- b. Waiving the right of Gilbert to require the fulfillment of all of the terms of the Contract.

14.3 An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Gilbert's Authorized Representative prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this contract. Gilbert may withhold an amount from the progress payment sufficient to pay the expenses Gilbert reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Gilbert on submission to any person designated by Gilbert for the submission, review or approval of the estimate of the Work.

14.4 Gilbert shall pay all unpaid amounts due Job Order Contractor under this Contract within sixty (60) days, after:

- a. Final Completion and acceptance of the Work;
- b. Presentation of a properly executed invoice; and
- c. Presentation of release of all claims against Gilbert arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Job Order Contractor's claim to amounts payable under this Contract has been assigned. Job Order Contractor shall complete a Contractor's release form acceptable to Gilbert.
- d. Consent of Job Order Contractor's surety, if any.

14.6 Job Order Contractor shall submit invoices to the e-Builder platform.

## **15.0 CONSTRUCTION SCHEDULE**

15.1 If required, the Job Order Contractor will submit for approval with the signed Job Order a schedule showing the sequence in which Job Order Contractor proposes to perform the Work and the dates on which Job Order Contractor contemplates starting and completing the significant elements of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case the basic information shall be the same and the schedule chart shall contain at a minimum:

- a. A list of the different types of work activities or work elements.
- b. Show the logical dependencies (ties) to indicate what Work shall be accomplished before other Work can begin.
- c. Show proposed start and complete dates or time frames for each work activity or work element.
- d. Calculate the "weighting" or relative worth each work activity or work element is of the total project either as a percent or dollar amount. If the Job Order Contractor fails to submit a schedule with the Job Order, Gilbert may withhold approval of progress payments until Job Order Contractor submits the required schedule.

15.2 For each Job Order, Gilbert shall issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date set forth in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Job Order Contractor. Job Order Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Job Order Contractor considers the Work complete and ready for its intended use, Job Order Contractor shall request Gilbert to inspect the Work to determine the status of completion. When Gilbert determines the Work to be substantially complete, Gilbert will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Job Order. Job Order Contractor shall proceed promptly to complete and correct items on the list.

15.3 Job Order Contractor shall submit a progress report every thirty (30) days, or as directed by Gilbert's Authorized Representative, and upon doing so shall immediately deliver a current schedule to Gilbert's Authorized Representative. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Gilbert's Authorized Representative. Without additional cost to Gilbert, Gilbert's Authorized Representative may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Gilbert's Authorized Representative deems necessary to demonstrate how the approved rate of progress will be regained.

15.3 Emergency Work: Job Order Contractor will give top priority to any emergency work Gilbert may have and will allocate all resources necessary to accomplish such work in accordance with Gilbert's schedule requirements. To the extent the Job Order Contractor incurs additional cost, expense or schedule delay in performing Gilbert's emergency work, Gilbert will equitably adjust the Contract under Section 22.

15.4 Failure of Job Order Contractor to comply with the requirements of Gilbert or Gilbert's Authorized Representative under this section shall be grounds for a determination by Gilbert that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Gilbert may terminate Job Order Contractor's right to proceed with the Work, or any separable part of it, in accordance with Section 27.

## **16.0 SUPERINTENDENCE BY JOB ORDER CONTRACTOR**

16.1 At all times during performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign and have on the site a competent superintendent who is satisfactory to Gilbert's Authorized Representative and has authority to act for Job Order Contractor.

## **17.0 INSPECTION OF CONSTRUCTION AND ACCEPTANCE**

17.1 Job Order Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Job Order Contractor shall maintain complete inspection records and make them available to Gilbert's Authorized Representative. All work shall be conducted under the general direction of Gilbert's Authorized Representative and is subject to inspection and test by Gilbert's Authorized Representative at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

17.2 Inspections and tests are for the sole benefit of Gilbert and do not:

- a. Relieve Job Order Contractor of responsibility for providing adequate quality control measures;
- b. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance;
- c. Constitute or imply acceptance; or
- d. Affect the continuing rights of Gilbert after acceptance of the complete work under Section 17.8 below.

17.3 The presence or absence of an inspector does not relieve Job Order Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Gilbert's Authorized Representative's written authorization.

17.4 Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Gilbert's Authorized Representative. Gilbert's Authorized Representative may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary.

Inspections and tests will be performed in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

17.5 Job Order Contractor shall, without charge, replace or correct Work found by Gilbert's Authorized Representative not to conform to Job Order requirements, unless Gilbert consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises.

17.6 If Job Order Contractor does not promptly replace or correct rejected Work, Gilbert may:

- a. By Contract or otherwise, replace or correct the Work and charge the cost to Job Order Contractor or
- b. Terminate for default Job Order Contractor's right to proceed.

17.7 If, before Final Completion and acceptance of the entire Work, Gilbert's Authorized Representative decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Gilbert shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

17.8 Substantial Completion means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Gilbert can occupy and use the Work or a portion thereof for its intended purposes. Unless otherwise specified in the Job Order, Gilbert shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work Gilbert determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Gilbert's rights under any warranty or guarantee.

## **18.0 OPERATIONS AND STORAGE AREAS**

18.1 Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Gilbert's Authorized Representative. Placement of materials and equipment shall be made with a minimum of interference to Gilbert operations and personnel.

18.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Job Order Contractor only with the approval of Gilbert's Authorized Representative and shall be built with labor and materials furnished by Job Order Contractor without expense to Gilbert's Authorized Representative. The temporary buildings and utilities shall remain the property of Job Order Contractor and shall be removed by Job Order Contractor at its expense upon the completion of the Work. With the written consent of Gilbert's Authorized Representative, the buildings and utilities may be abandoned and need not be removed.



18.3 Job Order Contractor shall use only established roadways or temporary roadways constructed by Job Order Contractor when and as authorized by Gilbert's Authorized Representative. Job Order Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.

## **19.0 PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS**

19.1 Job Order Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the site, which are not to be removed and which do not unreasonably interfere with the Work required under the Job Order. Job Order Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workers, Job Order Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Gilbert's Authorized Representative.

19.2 Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Gilbert's Authorized Representative may have the necessary repair work performed and charge the cost to Job Order Contractor.

19.3 Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private and public property. All damages shall be required or replaced by Job Order Contractor at no cost to Gilbert.

19.4 Job Order Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Gilbert for approval.

19.5 Job Order Contractor will coordinate and schedule off-duty police officers with the Town of Gilbert through Gilbert's off-duty police employment manager ("ODM") as a part of the Job Order Contractor's traffic control work, as necessary. Job Order Contractor will pay the ODM directly for the cost of the off-duty police officers at the rate(s) agreed between Gilbert and the ODM, and Gilbert will reimburse Job Order Contractor for the actual, documented cost of the off duty police officers at the rate(s) agreed between Gilbert and the ODM. Job Order Contractor shall not charge or pass through to Gilbert any mark-up for the off-duty officers. The Job Order 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 three hours to the project if scheduled. In the event that the Job Order Contractor fails to prosecute the work in a timely and orderly fashion, Gilbert shall notify the Job Order Contractor and reserves the right to deny reimbursement for the off-duty officers.

## **20.0 CLEANING UP AND REFUSE DISPOSAL**

20.1 Job Order Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Gilbert. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly condition satisfactory to Gilbert's Authorized Representative. Final cleanup of the premises shall be included in the period of performance of the Job Order. Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Gilbert's Authorized Representative unless Gilbert's Authorized Representative requires Job Order Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

## **21.0 WARRANTY OF CONSTRUCTION**

21.1 In addition to any other warranties in any Job Orders, and except as provided in Section 21.10 of this Section 21, Job Order Contractor warrants to Gilbert that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Gilbert, Job Order Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions of the Contract. Job Order Contractor shall promptly correct all Work rejected as defective or as failing to conform to the Contract whether observed before or after acceptance and whether or not fabricated, installed or completed. Job Order Contractor shall bear all costs of correcting such rejected Work, including compensation for the additional services of an engineer made necessary thereby.

21.2 If, within one year after the date of final acceptance by Gilbert of the Work, any of the Work is found to be defective or not in accordance with the Contract, Job Order Contractor shall correct it promptly after receipt of written notice from Gilbert to do so unless Gilbert has previously given Job Order Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract

21.3 Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Gilbert's real or personal property, when that damage is the result of:

- a. Job Order Contractor's failure to conform to requirements; or
- b. Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.

21.4 Job Order Contractor shall restore any work damaged in fulfilling the terms and conditions of this Section 21. Job Order Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

21.5 Gilbert shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

21.6 If Job Order Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Gilbert shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Job Order Contractor's expense.

21.7 With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:

- a. Obtain all warranties required by the Job Order;
- b. Require all warranties to be executed, in writing, for the benefit of Gilbert; and
- c. Enforce all warranties for the benefit of Gilbert;

21.8 In the event Job Order Contractor's warranty under Section 21.2 has expired, Gilbert may bring suit at its expense to enforce a subcontractor's, manufacturers, or supplier's warranty.

21.9 Unless a defect is caused by the negligence of Job Order Contractor or subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Gilbert or for the repair of any damage that results from any defect in Gilbert-furnished material or design.

21.10 Job Order Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.

21.11 This warranty shall not limit Gilbert's rights under Section 17 of this Contract with respect to latent defects, gross mistakes, or fraud.

## **22.0 CHANGE ORDERS**

22.1 Gilbert may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:

- a. In the specifications (including drawings and designs);
- b. In Gilbert-furnished facilities, equipment, materials, services, or site; or
- c. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

22.2 If Job Order Contractor believes any other order (which, as used in this Section 22.2, includes direction, instruction, interpretation, or determination) from Gilbert's Authorized Representative constitutes a change order under this Section 22; Job Order Contractor shall give Gilbert's Authorized

Representative written notice stating the date, circumstances, and source of the order, and that Job Order Contractor regards the order as a change order. Such written notice shall also state any changes to the price caused by the order. If any approved change under this Section 22 causes an increase or decrease in Job Order Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Gilbert shall make an equitable adjustment and modify the Job Order in writing.

22.3 Except as provided in this Section 22, no order, statement, or conduct of Gilbert shall be treated as a change under this section or entitle Job Order Contractor to an equitable adjustment hereunder.

### **23.0 PRICING CHANGES**

23.1 Job Order Contractor, in connection with any proposal it makes for a Job Order change order shall furnish a price breakdown itemized as required by Gilbert's Authorized Representative. Pricing for such changes shall be based on quantities mutually agreed to by Job Order Contractor and Gilbert, the rates agreed upon during contract negotiations, and the JOC markups established in Appendix B: JOC Pricing Matrix.

23.2 Job Order Contractor shall furnish to the Gilbert's Authorized Representative a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

### **24.0 SUSPENSION OF WORK**

24.1 Gilbert's Authorized Representative may order Job Order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that Gilbert's Authorized Representative determines appropriate.

24.2 If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Gilbert's Authorized Representative in the administration of a Job Order, or by Gilbert's Authorized Representative's failure to act within the time specified in the Job Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of overtime for performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

24.3 A claim under this section shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Gilbert in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

### **25.0 DISPUTES**

25.1 The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or

disagreements. If disputes or disagreements do arise, Job Order Contractor and Gilbert each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. Job Order Contractor and Gilbert will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein. The Job Order Contractor shall continue to perform the Work and Gilbert shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties. Gilbert designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. Job Order Contractor designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract.

Gilbert's Representative:

Job Order Contractor's Representative:

25.2 Any dispute which is not disposed of by agreement will be decided by the Gilbert, who will reduce its decision to writing and mail or otherwise furnish a copy thereof to the Job Order Contractor. Any dispute not finally resolved under this Section 25 may be brought before the state courts of the State of Arizona and adjudicated in accordance with the laws of Arizona.

**26.0 TERMINATION FOR CONVENIENCE OF GILBERT**

26.1 Gilbert may terminate performance of the Work under this Contract in whole or, from time to time, in part if Gilbert determines that termination is in Gilbert's interest. Gilbert shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.

26.2 After receipt of a Notice of Termination, and except as directed by Gilbert, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 26:

- a. Stop work as specified in the notice;
- b. Place no further subcontracts or orders (referred to as subcontracts in this Section 26) for materials, services or facilities, except as necessary to complete any Work not terminated;
- c. Assign to Gilbert, as directed by Gilbert, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Gilbert shall have the right to settle or to pay any termination settlement proposal arising out of those

terminations, or with approval or ratification to the extent required by Gilbert, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Section 26;

- d. As directed by Gilbert, transfer title and deliver to Gilbert:
  - i. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
  - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Gilbert;
- e. Complete performance of the Work not terminated;
- f. Take any action that may be necessary, or that Gilbert may direct, for the protection and preservation of the property related to this Contract that is in the Possession of Job Order Contractor and in which Gilbert has or may acquire an interest;
- g. Use its best efforts to sell, as directed or authorized by Gilbert, any property of the types referred to in Section 26.2(c) above; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Gilbert. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Gilbert under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Gilbert.

26.3 After termination, Job Order Contractor shall submit a final termination settlement proposal to Gilbert in the form and with the certification prescribed by Gilbert. Job Order Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

26.4 Job Order Contractor and Gilbert may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The Contract shall be amended, and Job Order Contractor paid the agreed amount.

26.5 If Job Order Contractor and Gilbert fail to agree on the whole amount to be paid Job Order Contractor because of the termination of work, Gilbert shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Section 26.4 above:

- a. For Work performed before the effective date of termination, the total (without duplication of any items) of:
  - i. The cost of this Work;
  - ii. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and
  - iii. A markup, including overhead and profit, on (i) above as is determined for pricing changes.

- b. The reasonable costs of settlement of the Work terminated, including:
  - i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

26.6 Except for normal spoilage, and except to the extent that Gilbert expressly assumed the risk of loss, Gilbert shall exclude from the amounts payable to Job Order Contractor under Section 26.5 above, the fair value, as determined by Gilbert, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Gilbert or to a buyer.

26.7 In arriving at the amount due Job Order Contractor under this Section 26, there shall be Deducted:

- a. All un-liquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;
- b. Any claim which Gilbert has against Job Order Contractor under the Contract; and
- c. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this Section 26 and not recovered by or credited to Gilbert.

26.8 If the termination is partial, Job Order Contractor may file a proposal with Gilbert for an equitable adjustment of the price(s) of the continued portion of the Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this Section 26 shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Gilbert. Gilbert may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of the Job Order, if Gilbert believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.

26.9 If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Gilbert upon demand.

26.10 Unless otherwise provided in this Contract or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Gilbert, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Gilbert, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## **27.0 DEFAULT**

27.1 If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Gilbert may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon thirty (30) days written notice to the Job Order Contractor. In this event, Gilbert may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

27.2 Job Order Contractor's right to proceed shall not be terminated under this Section if: a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Job Order Contractor. Examples of such causes include:

- a. acts of God or of the public enemy,
- b. acts of Gilbert in its Contractual capacity,
- c. acts of another Contractor in the performance of a Contract with Gilbert,
- d. fires,
- e. floods,
- f. epidemics,
- g. quarantine restrictions,
- h. strikes,
- i. freight embargoes,
- j. unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or
- xk delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the subcontractors or suppliers; and b. Job Order Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Gilbert), notifies Gilbert in writing of the causes of delay. The Gilbert shall ascertain the facts and the extent of delay. If, in the judgment of Gilbert, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Gilbert shall be final and conclusive on the parties, but subject to appeal and review under Section 25.

27.3 If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Gilbert.

27.4 The rights and remedies of Gilbert in this Section 27 are in addition to any other rights and remedies provided by law or under this Contract.

## **28.0 SAFETY**

28.1 Job Order Contractor shall comply with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Gilbert for fines, penalties,



and corrective measures that result from the acts of commission or omission of Job Order Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

28.2 Job Order Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

28.3 Job Order Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations.

28.4 Job Order Contractor shall provide warning signs, barricades and verbal warnings as required.

28.5 Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

28.6 Job Order Contractor shall promptly notify Gilbert's Authorized Representative of any accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Gilbert's Authorized Representative.

28.7 Job Order Contractor shall maintain a set of OSHA articles at the jobsite as they apply to the Work being performed. Copies shall be provided to Gilbert's Authorized Representative when requested.

28.9 Job Order Contractor shall submit to Gilbert's Authorized Representative a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of a Job Order and prior to the commencement of the Work.

28.10 Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, Job Order Contractor address, and telephone number of the assigned individual shall be submitted to Gilbert's Authorized Representative by Job Order Contractor along with its safety policies and program procedures.

28.11 Job Order Contractor shall provide and maintain on the jobsite, at all times, a completely stocked first aid kit which contains all standard emergency medical supplies.

28.12 Job Order Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

28.13 Gilbert reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Gilbert, shall be cause for the termination of the Job Order in accordance with Section 27.

## 29.0 USE AND POSSESSION PRIOR TO COMPLETION

29.1 Gilbert shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, Gilbert shall furnish Job Order Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Gilbert intends to take possession of or use. However, failure of Gilbert to list any item of work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Gilbert possession or use shall not be deemed an acceptance of any work under this Contract.

29.2 While Gilbert has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Gilbert's possession or use, notwithstanding the terms of Section 6. If prior possession or use by Gilbert delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

## 30.0 OTHER CONTRACTS

30.1 Gilbert may undertake or award other Contracts for additional work at or near the site of Work under this Contract. Job Order Contractor shall fully cooperate with the other general Contractors and with Gilbert's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Gilbert. Job Order Contractor shall not commit or permit any act that will interfere with the performance of work by any other general Contractor or by Gilbert's employees.

## 31.0 DISSEMINATION OF CONTRACT INFORMATION

31.1 Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Gilbert.

## 32.0 PERFORMANCE AND PAYMENT BONDS

32.1 Job Order Contractor shall furnish a Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work required by a Job Order, not including design services, preconstruction services, finance services, maintenance services, operations services or other related services included in a Job Order. The Performance Bond shall be conditioned on the faithful performance of such Work. ***[OPTION: THE PERFORMANCE BOND MAY BE IN THE AMOUNT OF THE CONTRACT FOR THE FULL TERM OF THE CONTRACT, FOR EACH YEAR OF A MULTIYEAR CONTRACT OR A SEPARATE BOND FOR EACH JOB ORDER. REVISE THIS PARAGRAPH IF THE BONDS ARE TO BE IN AN AMOUNT OTHER THAN A SPECIFIC JOB ORDER.]*** The Performance and Payment Bonds shall be submitted to Gilbert within ten (10) calendar days after issuance of a Job Order. A Notice to Proceed will not be issued until properly executed bonds are received and accepted by Gilbert.

### 33.0 INSURANCE

33.1 Job Order Contractor agrees to comply with all Gilbert ordinance and state and federal laws and regulations. Without limiting any obligations or liabilities of Job Order Contractor, Job Order Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to Gilbert. Failure to maintain insurance as specified may result in termination of this Contract at Gilbert's option.

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

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

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

33.5 Primary Insurance: Job Order Contractor's insurance shall be primary insurance as respects performance of this Contract and in the protection of Gilbert as an Additional Insured.

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

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

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

33.9 Evidence of Insurance: Prior to commencing any Work under the Contract, Job Order Contractor shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by the Contract, issued by Job Order Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the Contract 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 Work. If any of the above cited policies expire during the life of the Contract, it shall be Job Order Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

33.9.1 Gilbert, its agents, representatives, officers, directors, officials and employees are Additional Insured's as follows:

- a) Commercial General Liability – Under ISO Form CG 20 10 04 13 and CG 20 37 04 13 or equivalent.
- b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
- c) Excess Liability – Follow Form to underlying insurance as required.

33.9.2 Job Order Contractor's insurance shall be primary insurance as respects performance of this Contract.

33.9.3 Certificate shall cite 30 day advance notice cancellation provision.

### 33.10 REQUIRED COVERAGE:

33.10.1 Commercial General Liability: Job Order Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate, and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Offices, Inc. policy form CG 00 01 10 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, Gilbert, its agents, 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 04 13 and CG 20 37 04 13, 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." Job Order Contractor, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject Work. Job Order Contractor shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming Gilbert, its agents, representatives, officers, directors, officials and employees as Additional Insured as

required. If any excess insurance is utilized to fulfill the requirements of this Section 33.10.1, such excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

33.10.2 Vehicle Liability. Job Order Contractor shall maintain Business Automobile Liability insurance with a limit of \$3,000,000 each occurrence on Contractor’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Work. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the Work, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, Gilbert, its 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 section, such excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

33.10.3 Worker’s Compensation Insurance: Job Order Contractor shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of Job Order Contractor’s employees engaged in the performance of the Work and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

33.10.4 Builder’s “All Risk”: If the Work includes construction services, Job Order Contractor shall maintain Builder’s “All Risk” Insurance in an amount not less than one hundred percent (100%) of the contract price. Such policy shall include coverage for fire, lightning, 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 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.

## **34.0 INDEMNIFICATION**

34.1 To the fullest extent permitted by law, Job Order 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 Job Order Contractor or other persons employed or used by the Job Order Contractor in the performance of this Agreement. Job Order 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 Job Order 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 Job Order Contractor or used by Job Order Contractor in the performance of this Contract.

## **35.0 CONTRACT ORDER OF PRECEDENCE**

35.1 In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. Contract Modifications, if any;
- b. The Contract including Attachments;
- c. Job Orders;
- d. Drawings; and
- e. Specifications.

### **36.0 NOTICES**

36.1 All notices to either party by the other shall be delivered personally or sent by first class United States mail, registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

- a. Gilbert:
- b. Job Order Contractor:  
and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.

### **37.0 SEVERABILITY**

37.1 If any provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

### **38.0 WAIVERS**

38.1 Neither Gilbert's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and Job Order Contractor shall be and remain liable to Owner in accordance with applicable law and the terms of this Contract for all damages to Owner caused by Job Order Contractor's negligent act, error or omission in the performance of any of the Work.

38.2 The waiver by Gilbert of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

### **39.0 MERGER**

39.1 This Contract and all procurement documents incorporated by reference set forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Work, including an action in tort.

#### **40.0 NON-AVAILABILITY OF FUNDS**

40.1 Every payment obligation of the Gilbert under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Gilbert at the end of the period for which funds are available.

#### **41.0 AUDIT OF RECORDS**

41.1 Pursuant to applicable laws, the Job Order Contractor shall retain and shall contractually require each subcontractor to retain all data, books, and other records (“records”) relating to this Contract for a period of five years after completion of this Contract. All records shall be subject to inspection and audit by the Gilbert at reasonable times. Upon request, the Job Order Contractor shall produce the original of any or all such records. If approved by Gilbert, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **42.0 CANCELLATION FOR CONFLICT OF INTEREST**

42.1 Pursuant to applicable law, the Gilbert may cancel this Contract, without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Gilbert was at any time while this Contract or extension of this Contract is in effect, an employee or agent of any other party to this Contract in any capacity or consultant to any other party of this Contract. A cancellation made pursuant to this provision shall be effective when the Job Order Contractor receives written notice of the cancellation unless the notice specifies a later time.

#### **43.0 NON-DISCRIMINATION**

43.1 The Job Order Contractor shall comply with all laws mandating that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulation, including the Americans With Disabilities Act. The Job Order Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, color, religion, sex, national origin or disability.

#### **44.0 THIRD PARTY ANTITRUST VIOLATIONS**

44.1 The Job Order Contractor assigns to the Gilbert any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Job Order Contractor toward fulfillment of this Contract.

## **45.0 INTERPRETATION, JURISDICTION AND VENUE**

45.1 This Contract shall be construed and interpreted solely in accordance with the laws of the State of Arizona. Jurisdiction and venue for any suit, right or cause of action arising under or in connection with this Contract shall be exclusively in the State of Arizona.

## **46.0 IMMIGRATION LAW COMPLIANCE WARRANTY**

46.1 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.

46.2 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.

46.3 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).

46.4 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.

46.5 If state law is amended, the parties may modify this Section 46 consistent with state law

## **47.0 EQUAL TREATMENT OF WORKERS**

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



**48.0 UYGHURS**

48.1 In accordance with Arizona Revised Statutes § 35-394, Job Order Contractor hereby certifies and agrees that Job Order Contractor does not currently and shall not for the duration of this Contract use 1) the forced labor of ethnic Uyghurs in the People’s Republic of China, 2) any services or goods produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and/or 3) any suppliers, contractors or subcontractors that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If Job Order Contractor becomes aware during the term of this Contract that Job Order Contractor is not in compliance with this Section, then Job Order Contractor shall notify Gilbert within five (5) business days after becoming aware of such noncompliance. If Job Order Contractor does not provide Gilbert with written certification that Job Order Contractor has remedied such noncompliance within one hundred eighty (180) days after notifying Gilbert of such noncompliance, this Contract shall terminate, except that if the Contract termination date occurs before the end of such one hundred eighty (180) day remedy period, this Contract shall terminate on such contract termination date.

IN TESTIMONY OF WHICH, this instrument has been executed by and on behalf of the Job Order Contractor on the day of \_\_\_\_\_, 20\_\_, and has been executed by and on behalf of Gilbert the day of \_\_\_\_\_, 20\_\_.

**JOB ORDER CONTRACTOR**

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**TOWN OF GILBERT**

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

Name: \_\_\_\_\_

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

## APPENDIX A

### GENERAL DESCRIPTION OF SERVICES REQUIRED

The Contract consists of providing the following services: **General Building and Facilities Projects**. This contract may provide services for maintenance, repair, and minor and major new construction services (including related design services) for a wide range of Town building and facility related projects, including but not limited to, the following types of work:

- Buildings (small buildings and building repairs)
- Tenant Improvements
- Mechanical, electrical, and plumbing
- Heating, ventilation, and air conditioning
- Roofing
- Flooring
- Lighting
- Fire Safety and Security Systems
- Masonry
- Painting
- Note this will also include ancillary related site improvements including concrete, utilities, and landscaping work as necessary.

**APPENDIX B**  
**JOC PRICING MATRIX**

The JOC Fees (Overhead and Profit) associated with this Contract are as follows:

	\$0 to \$250,000	\$250,001 to \$1,000,000	\$1,000,001 to \$3,000,000	Above \$3,000,001
JOC Fee (Overhead and Profit)	11.00%	10.00%	9.00%	8.50%

### APPENDIX C

### JOB ORDER

Date: \_\_\_\_\_  
 Project Number: \_\_\_\_\_  
 Contractor's Name: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Contract No: \_\_\_\_\_  
 Job Order No.: \_\_\_\_\_  
 Scope of Work/Technical Specifications/Drawings See Attachment 1  
 Location of Work: \_\_\_\_\_  
 Total Cost for Job Order: \_\_\_\_\_  
 Completion Date/Schedule: \_\_\_\_\_  
 Submittal Requirements: See Attachment 2  
 Other: \_\_\_\_\_

Payment Submittal Requirements: The Payment submittal will be monthly and will be on the Town of Gilbert form attached to this Job Order. It shall identify the percent of work complete and the percent of payment requested.

Approved By: \_\_\_\_\_  
CONTRACTOR

Approved By: \_\_\_\_\_  
Authorized Town Representative

Approved By: \_\_\_\_\_  
Town of Gilbert