

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

Contract No. _____

THIS Agreement 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 “Consultant.”

FOR THE PURPOSE of providing professional consulting services for the Town of Gilbert for supplemental inspections, hereinafter referred to as the “Project,” Gilbert and Consultant do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Consultant. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Consultant 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 Consultant 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.

1.2.1 All Services performed under this Contract shall be provided on an if-needed and as-needed basis at the request of Gilbert. The Consultant acknowledges that this Contract is on an on-call basis, and Gilbert does not guarantee any minimum volume of work or compensation under this Contract.

1.2.2 All Service performed under this agreement shall be the sole benefit of the Town and performed in the best interest of the Town.

1.3 Responsibility of the Consultant.

1.3.1 Consultant hereby agrees that the documents and reports prepared by Consultant 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 documents and reports prepared by Consultant shall be prepared in accordance with professional consulting standards, as applicable. Any review or approval of said documents and reports does not diminish these requirements.

1.3.2 Consultant shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.3 Consultant shall designate _____ as Project Manager and all communications shall be directed to him/her. Key Consultant Personnel are set forth in Exhibit B. “Key Personnel” includes the Consultant employee who will place his or 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 Consultant shall first obtain the approval of Gilbert.

1.3.4 Consultant's subconsultants are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of subconsultants on Exhibit B, either by adding, deleting or changing subconsultants, shall require the written consent of Gilbert.

1.3.5 Consultant shall obtain its own legal, insurance and financial advice regarding Consultant's legal, insurance and financial obligations under this Agreement.

1.3.6 Consultant shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.7 Consultant shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, and transportation, and other facilities and services necessary for the proper execution and completion of the Services. Consultant shall provide and pay for and ensure all equipment necessary for the Services.

1.3.8 Consultant shall obtain and pay for all business registrations, licenses, permits, governmental inspections and governmental fees necessary and customarily required for the proper execution and completion of Services. Consultant shall pay all applicable taxes. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services.

1.3.9 Consultant shall disclose any current contracts associated with fiber optic utility providers upon execution of this Agreement and notify the Town of any new contract with fiber utility providers within 30 days of execution of the new contract. The failure to timely notify Gilbert of any contracts with fiber optic utility providers may result in the immediate termination of this Agreement notwithstanding the notice requirements of Section 6.

1.3.10 Consultant shall promptly notify the Town of any existing or proposed private-sector inspection work that could reasonably create an actual or perceived conflict with Consultant's obligations under this Agreement. Upon such notice, or upon the Town otherwise identifying a potential conflict, the Town may conduct a reasonable review of the circumstances. Consultant shall cooperate fully in that review. If, after review, the Town determines that a conflict exists and cannot be adequately mitigated, the Town may terminate this Agreement upon written notice. Termination under this section is not automatic and shall occur only after the Town completes its review and makes a reasonable determination that continuation of the Agreement is not in the Town's best interest.

1.4 Responsibility of Gilbert.

1.4.1 Gilbert shall cooperate with the Consultant by placing at its disposal all available information concerning the site of the Project. Gilbert agrees to obtain its own legal, insurance and financial advice Gilbert may require for the Project.

1.4.2 Gilbert designates _____ as its Project Representative. All communications to Gilbert shall be through its Project Representative.

1.5 Contract Time; Renewal.

1.5.1 Contract Time. The Contract commences upon execution of the Contract and continues through June 30, 2027.

1.5.2 Renewal. The Contract may be renewed for up to four (4) additional one-year terms upon mutual agreement of the parties. The Contract may be renewed upon written approval of Gilbert's Purchasing Officer if: (1) the renewal Contract amount does not exceed \$100,000; or (2) the original prices remain in effect during the renewal term. If at least 60 days prior to the end of the original term the Contractor requests a price adjustment, Contractor shall submit evidence of increased costs to the Contractor. Any price adjustment shall be in the sole discretion of Gilbert and shall not exceed the amount of increased cost to the Contractor. Price adjustment requests shall be a factor in the Contract extension review process. A price adjustment less than 10% of the original contract price may be approved by the Purchasing Officer. The Gilbert Council must approve renewal in all other cases. Any renewal shall be in writing and shall expressly state the prices for the services during the renewal term. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum: The Basis of Compensation to Consultant 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. Consultant 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 Consultant 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. All payment requests shall be certified by the Consultant'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, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit E. If such changes cause an increase or decrease in the Consultant's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by Consultant will be allowed by Gilbert except as provided herein nor shall Consultant provide any services or furnish any materials not covered by this Agreement unless Gilbert first approves in writing.

3.2 Emergency Response.

3.2.1 Response. Gilbert is an emergency response organization. Consultant services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Consultant to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Consultant shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control.

3.2.2 Emergency Contact. Consultant shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on a 24 hour/7 days a week basis so that effective response can be initiated. Consultant's contact person(s) must be able to communicate with Gilbert within one (1) hour from the time the contact person is telephoned by Gilbert.

3.2.3 Payment. Consultant shall be paid a premium not to exceed 10% above the standard contract prices for any services or supplies provided in the case of an emergency, at Gilbert's direction, and shall be entitled to reimbursement of expenses not covered by the standard contract prices at a premium not to exceed 10% above actual expenses. In considering the premium to be paid, Gilbert shall consider the good-faith efforts of Consultant to respond, the timeliness of response, and any other factors deemed relevant by either of the parties. If Gilbert

believes Consultant's response was adequate, the full 10% premium will be paid; if not, Gilbert, in its reasonable discretion, will pay a lesser premium.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General. Consultant agrees to comply with all Gilbert ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant 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 Consultant. 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 Consultant 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 via formal written endorsement.

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 is satisfactorily performed, completed and formally accepted by Gilbert, unless specified otherwise in this Agreement.

4.5 Primary Insurance. Consultant's insurance shall be primary insurance as respects performance of subject contract and in the 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 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 Consultant. Consultant 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. Consultant shall be solely responsible for any such deductible or self-insured retention amount. Gilbert, at its option, may require Consultant 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 Subconsultants. If any Services under this Agreement are subcontracted in any way, Consultant shall execute written agreement with Subconsultant containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Gilbert and Consultant. Consultant shall be responsible for executing the agreement with Subconsultant and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Consultant shall furnish Gilbert with Certificate(s) of Insurance, and formal endorsements as required by this Agreement, issued by Consultant'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 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 Gilbert Risk Manager. Certificate shall cite that should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Certificates shall specifically cite the following provisions:

4.10.1 Gilbert, its agents, representatives, officers, directors, officials and employees is an Additional Insured 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 10 13 or equivalent.
- c. Excess Liability-Follow Form to underlying insurance.

4.10.2 Consultant's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 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 Consultant, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

4.11 Required Coverage:

4.11.1 Commercial General Liability: Consultant 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. Commercial General Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Agreement. The policy shall cover liability arising from premises, operations, independent Consultants, 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 01 04 13 or equivalent thereof, including but not limited to, separation of insured clause. 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: Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claims and \$2,000,000 all claims. 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 Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on Consultant’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant’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 11 20 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 10 13 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: Consultant shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant’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, Consultant, 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 Consultant or other persons employed or used by the Consultant in the performance of this Agreement. Consultant'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 Consultant'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 Consultant or used by Consultant 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 Consultant, 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 Consultant to fulfill its contract obligations. Upon receipt of such notice, the Consultant 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 Consultant in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Consultant in the event of substantial failure by Gilbert to fulfill its obligations.

6.2 Payment to Consultant Upon Termination. If the Agreement is terminated, Gilbert shall pay the Consultant 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 Subconsultants, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant'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 Consultant 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 Consultant 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 Consultant; however, any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Consultant. Any verification or adaptation of the documents by Consultant for other purposes than contemplated herein will entitle Consultant 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 Consultant. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Consultant will be an independent Consultant and not Gilbert's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code, the Immigration and Naturalization Act, Arizona revenue and taxation laws, Arizona Workers' Compensation Law, and Arizona Unemployment Insurance Law. The Consultant agrees that it is a separate and independent enterprise from Gilbert, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Consultant and Gilbert, and Gilbert will not be liable for any obligation incurred by the Consultant, including but not limited to unpaid minimum wages and/or overtime premiums. [FOR SOLE PROPRIETORS ONLY: The Consultant shall execute the Sole Proprietor's Waiver of Workers' Compensation Benefits attached hereto and incorporated by reference.

7.6 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant verifies the employment eligibility of the employee through the E-Verify program. If Consultant uses any subconsultants in performance of the Services, subconsultants shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subconsultants shall further warrant that after hiring an employee, such subconsultant verifies the employment eligibility of the employee through the E-Verify program. 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. Consultant 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. Consultant shall not be deemed in material breach of this Contract if the Consultant and/or subconsultants 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). Gilbert retains the legal right to inspect the papers of any Consultant or subconsultant employee who works on the Contract to ensure that the Consultant or subconsultant is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.7 Equal Treatment of Workers. Consultant 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. Consultant 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”). Consultant shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Consultant or its employees.

7.8 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in Ariz. Rev. Stat. § 35-393.

7.9 Uyghur. In accordance with Arizona Revised Statutes § 35-394, Consultant hereby certifies and agrees that Consultant 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 Consultant becomes aware during the term of this Contract that Consultant is not in compliance with this Section, then Consultant shall notify Gilbert within five (5) business days after becoming aware of such noncompliance. If Consultant does not provide Gilbert with written certification that Consultant 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.

7.10 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Consultant within this Agreement are for the exclusive use of Gilbert and Consultant shall not engage in conflict of interest nor appropriate Gilbert work product or information for the benefit of any third parties without Gilbert consent.

7.11 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.12 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.

7.13 Time is of the Essence. The timely completion of the Project is of critical importance to the economic circumstances of Gilbert.

7.14 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:

CONSULTANT:

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

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

7.15 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

8. SUSPENSION OF WORK

8.1 Order to Suspend. Gilbert may order the Consultant, in writing, to suspend all or any part of the Services for such period of time as it may determine to be appropriate for the convenience of Gilbert.

8.2 Adjustment to Contract Fee. 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 Consultant, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

9. INTERESTS AND BENEFITS

9.1 Interest of Consultant. The Consultant covenants that it 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 Consultant 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 or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

9.3 Notice Regarding A.R.S. § 38-511. This Contract is subject to cancellation under Section 38-511, Arizona Revised Statutes.

10. ASSIGNABILITY

The Consultant 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 Consultant from Gilbert under this Agreement may be assigned to a bank, trust Consultant, 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 Consultant have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____
Scott Anderson, Mayor

ATTEST:

By: _____
Chaveli Herrera, Town Clerk

APPROVED AS TO FORM:

By: _____
Christopher W. Payne
Town Attorney

CONSULTANT

By: _____
Its: _____

EXHIBIT A SCOPE OF WORK

A. GENERAL

1. The Project is generally described as follows:

Providing third-party inspection services to assist with private fiber deployment projects. This initiative will facilitate the opening of up to 20 to 40 permits, with the possibility for future expansion. Over an anticipated 3- to 5-year construction period, the Consultant shall provide adequate inspections staff to meet the inspections needs of the assigned open permits. Services will include part-time to full-time field inspections to ensure compliance with applicable standards and proper execution of the fiber installation.

2. Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Consultant under this Contract. Consultant shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
3. Consultant shall maintain a log of all meetings, site visits or discussions held in conjunction with the Services, with documentation of major discussion points, observations, decisions, question or comments. These shall be furnished to Gilbert, for inclusion in the overall Project documentation.
4. All Services performed under this Contract shall be performed by or under the direct supervision of persons then licensed in the State of Arizona to perform these Services. The name of each such licensed individual shall be listed on the title sheet of the Plans and Specifications.
5. Time is of the essence in this contract.

B. SPECIFIC SCOPE OF SERVICES.

1. Provide staff to perform visual field inspections of dry utility installations
 - a. Provided staff will observe and document:
 - i. Running line locations;
 - ii. Verify depth of conduit installation
 - iii. Verify contractors are potholing existing utilities;
 - iv. Ensure work is being performed in accordance with MAG and Town Standards;

- v. Ensure work areas are properly barricaded from public access and left in an acceptable manner after work is complete;
 - vi. Ensure proper surface restorations are being completed;
 - vii. Perform final inspections of projects and ensure all work and restoration of project area is completed;
 - viii. Adequately document inspections for permanent construction records for the Town;
 - ix. Other items necessary to carry out inspection services for dry utility installation projects.
- 2. Provide staff to perform visual field inspection of temporary traffic control.
 - a. Provide staff will observe and document:
 - i. Traffic control devices are set up in conformance with approved Temporary Traffic Control Permit and the most recent revision of the Manual of Uniform Traffic Control Devices (MUTCD);
 - ii. Attend pre-construction meetings to discuss traffic control configurations needed;
 - iii. Coordinate with Town Traffic Control staff;
 - iv. Other work items necessary to carry out inspection services for traffic control setups.
- 3. Equipment to be provided by consultant:
 - a. Consultant to provide staff with:
 - i. All personal protective equipment necessary to safely work in a dry utility workplace. Items to include but limited to, safety vest, hard hat, safety glasses, ear protection etc.
 - ii. A vehicle with some form of flashing strobe
 - iii. Laptop computer
 - iv. Cell phone
 - v. Any other equipment necessary to carry out inspection services for dry utility installation projects.

EXHIBIT B
CONSULTANT'S KEY PERSONNEL AND SUBCONSULTANTS

KEY PERSONNEL:

SUBCONSULTANTS:

EXHIBIT C
SCHEDULE OF SERVICES

EXHIBIT D
PAYMENT SCHEDULE

A. Compensation

1. The consideration of payment to Consultant, as provided herein shall be in full compensation for all of Consultant's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.
2. Attached hereto as Exhibit D-1 is the Consultant's hours and fee estimate for the Project. Consultant's fee shall not exceed the amounts:

Description

Amount

B. Method of Payment

Invoices shall be on a form and in the format provided by Gilbert and are to be submitted in triplicate to Gilbert via Gilbert's authorized representative.

C. Reimbursable Costs

Consultant will be reimbursed for expenses up to a maximum amount of \$ _____. The items allowable for reimbursement are as follows:

1. Cost of transportation. (Mileage associated with Project, but not to/from Project site at _____ cents per mile. Any out of state travel must receive prior approval of Gilbert.)
2. Costs of printing, as required by the contract.
3. Cost of long distance telephone, postage, UPS, Federal Express, etc.
4. Costs of faxes at \$ _____ per page.
5. Cost of other items as required, with prior approval from Gilbert.

All reimbursable costs must be submitted with monthly bill.

**EXHIBIT E
CHANGE ORDER**

CHANGE ORDER NO. _____

Distribution:	GILBERT	[]
	CONSULTANT	[]
	OTHER	[]

PROJECT: _____

DATE:

OWNER: Town of Gilbert

CONSULTANT:

AGREEMENT DATED:

_____CHANGES:

The Agreement is changed as follows: **COMPLETE**

Not valid until signed by both Gilbert and Consultant.

Signature of Consultant indicates acceptance.

The original compensation under the Agreement was not to exceed _____.

The net change by previously authorized Change Orders is not to exceed _____.

The compensation prior to this Change Order was _____

The compensation will be increased by this Change Order in an amount not to exceed _____.

The new compensation under the Agreement including this Change Order shall not exceed _____.

The Contract Time will increase by _____

ACCEPTANCE STATUS:

Consultant
By _____

Town of Gilbert
By _____

Date _____

Date _____