

**AGREEMENT FOR SERVICES**  
**Agreement No. 323000223**

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 the “Town” and **Artistic Land Management, Inc.**, hereinafter referred to as the “Contractor.”

FOR THE PURPOSE of providing **Landscaping Services for Zone D** for the Town of Gilbert, and Contractor do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Contractor. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Contractor to render services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Contractor 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 is set forth in Exhibit A.

1.3 Responsibility of the Contractor.

1.3.1 Contractor hereby agrees that the documents and reports prepared by Contractor will fulfill the purposes of the Contract, 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 Contractor 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 Contractor shall tour the Services site and become familiar with existing conditions, including utilities, prior to commencing the Services and notify Town of any constraints associated with the Services site.

1.3.3 Contractor shall procure and maintain during the course of this Contract insurance coverage required by Paragraph 4 of this Contract.

1.3.4 Contractor shall designate **Thom Krepelka** as Contractor Representative and all communications shall be directed to Thom. Key Contractor Personnel are set forth in Exhibit B. “Key Personnel” includes the Contractor employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Contractor. Prior to changing such designation Contractor shall first obtain the approval of Gilbert.

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

1.3.6 Contractor shall obtain its own legal, insurance and financial advice regarding Contractor's legal, insurance and financial obligations under this Contract.

1.3.7 Contractor shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.8 Contractor 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. Contractor shall provide and pay for and insure for all equipment necessary for the Services.

1.3.9 Contractor 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. Contractor shall pay all applicable taxes. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services.

#### 1.4 Responsibility of Gilbert.

1.4.1 Gilbert shall cooperate with the Contractor by placing at his disposal all available information concerning the Services.

1.4.2 Gilbert designates **Elwood Butcher** as its Gilbert Representative. All communications to Gilbert shall be through its Gilbert Representative. Phone – 480-283-3710, and Email – [Elwood.Butcher@gilbertaz.gov](mailto:Elwood.Butcher@gilbertaz.gov).

#### 1.5 Agreement Term; Renewal.

Agreement Term; Renewal. If funds for this Agreement are not appropriated or budgeted by July 1, 2023 or of any fiscal year thereafter, Gilbert may terminate this Agreement by giving written notice to Contractor. Otherwise, the Agreement commences upon execution of the Agreement on **July 1, 2023** and continues through **June 30, 2024**. The Agreement may be renewed for up to four (4) additional one-year terms upon mutual agreement of the parties. The Agreement may be renewed upon written approval of Gilbert's Purchasing Officer if: (1) the renewal Agreement 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 Agreement extension review process. A price adjustment less than 10% of the original Agreement 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 Compensation. All compensation for complete and satisfactory completion of services rendered by Contractor, including its subcontractor(s), shall be set forth in Exhibit D and shall not exceed **\$424,546.89**.

2.2 Method of Payment. Method of payment shall be set forth in Exhibit D. If payment is to be made monthly, Contractor shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices shall be for services completed.

2.3 Invoices. Gilbert reserves the right to deduct up to ten percent (10%) from the invoiced amount for any invoice submitted more than sixty (60) days after the Services are completed. Invoices for the month of June shall be submitted on or before July 15. Invoices submitted after the close out of the fiscal year (July 25) shall not be paid by Gilbert.

2.4 The Contractor shall provide to Gilbert its completed W-9 Form prior to receipt of any Compensation.

2.4 Taxes. Contractor will be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or services generally taxable to the Contractor are eligible for a tax exemption, credit or deduction due to the nature of the item, at Contractor's request, Gilbert will assist Contractor in applying for and obtaining the same.

## 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. If such changes cause an increase or decrease in the Contractor'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 Contractor for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Contractor 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 Contractor will be allowed by Gilbert except as provided herein nor shall Contractor 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. Contractor 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 Contractor 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. Contractor 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. Contractor 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. Contractor’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. Contractor shall be paid a premium not to exceed 10% above the standard Agreement 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 Agreement 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 Contractor to respond, the timeliness of response, and any other factors deemed relevant by either of the parties. If Gilbert believes Contractor’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. Contractor agrees to comply with all Gilbert ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Contractor, Contractor 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 Contractor. 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 Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

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

officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement is satisfactorily performed, completed and formally accepted by Gilbert, unless specified otherwise in this Agreement.

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

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Contractor shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Contractor'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 Contractor and be sent to the Gilbert Purchasing Representative. If any of the above cited policies expire during the life of this Agreement, it shall be 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:

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 11 85 or equivalent.
- b. Auto Liability-Under ISO Form CA 20 48 or equivalent.
- c. Excess Liability-Follow Form to underlying insurance.

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

4.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against Gilbert, its agents, representatives, officers, directors, officials and employees for any claims arising out of Services performed by Contractor under this Agreement.

4.10.4 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the Contractor, 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: Contractor shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.11.2 Professional Liability: INTENTIONALLY OMITTED

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

4.11.4 Workers' Compensation Insurance: Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor'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, the Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Gilbert, its agents, officers, officials and employees from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, Services caused by the Contractor, its agents, employees or any tier of Contractor's subcontractors related to the Services in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify Gilbert, its agents, officers, officials 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 therefrom, caused by Contractor's acts, errors, mistakes, omissions, Services in the performance of this Agreement including any employee of the Contractor, any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, Services the Contractor may be legally liable including Gilbert. Such indemnity does not extend to Gilbert's negligence.

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 Contractor, 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 Contractor to fulfill his Agreement obligations. Upon receipt of such notice, the Contractor 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 Contractor in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Contractor in the event of substantial failure by Gilbert to fulfill its obligations.

6.2 Payment to Contractor Upon Termination. If the Agreement is terminated, Gilbert shall pay the Contractor for the services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

## 7. ASSURANCES

7.1 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin, familial status, or disability. The Contractor shall also require in writing, that all its subcontractors and suppliers are obligated to the same Terms and Conditions set forth in this Agreement. Contractor shall ensure compliance with such terms and conditions by its subcontractors and suppliers.

7.2 Examination of Records. The Contractor 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 Contractor involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data. Original documents 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 Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Contractor. Any verification or adaptation of the documents by Contractor for other purposes than contemplated herein will entitle Contractor to further compensation as agreed upon between the parties.

7.4 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.5 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an



independent contractor 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 Contractor 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 Agreement shall not be construed as creating any joint employment relationship between the Contractor and Gilbert, and Gilbert will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums. [FOR SOLE PROPRIETORS ONLY: The Contractor 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, 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. If Contractor uses any subcontractors in performance of the Agreement, 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. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. 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 Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement 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). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Agreement to ensure that the Contractor or subcontractor 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. 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.

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

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

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

7.11 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:

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

CONTRACTOR:

Artistic Land Management, Inc.  
P.O. Box 2320  
Chandler, AZ 85244

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

7.12 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 Contractor, in writing, to suspend all or any part of the Services for such period of time as Gilbert determines to be appropriate.

8.2 Adjustment to Agreement 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 Contractor, 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 Contractor. The Contractor 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 Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

9.2 Interest of Town 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 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 Agreement is subject to cancellation under Section 38-511, Arizona Revised Statutes.

## 10. ASSIGNABILITY

The Contractor 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.

## 11. COOPERATIVE USE OF AGREEMENT

In addition to the Town of Gilbert and with the approval of the Vendor, this Agreement may be extended for use by other municipalities, school districts, and government agencies of the State. A current listing of eligible entities may be found at [www.mesaaz.gov/business/purchasing/save](http://www.mesaaz.gov/business/purchasing/save). Any such usage by other entities must be in accordance with the ordinance, charter and /or procurement rules and regulations of the respective political entity.

IN WITNESS WHEREOF, Gilbert and the Contractor have executed this Agreement as of the date first written.

TOWN OF GILBERT:

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
Chaveli Herrera  
Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Christopher W. Payne  
Town Attorney

CONTRACTOR:

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

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

**EXHIBIT A  
SCOPE OF WORK**

**See attached**

## II. SCOPE OF WORK

### STANDARD SPECIFICATIONS

#### 2.1 CLEANING/GENERAL MAINTENANCE

2.1.1 Schedule. Contractor must submit a cleaning/general maintenance schedule to Gilbert for approval. A two (2) week cleaning is to occur at standard intervals, i.e. approximately the same day each week or month.

##### 2.1.2 Two (2) Week Cleaning.

A. Except as otherwise provided for in this Section 3.1, on a two week basis, Contractor shall remove debris from all Work Areas, including but not limited to trash such as paper, cans, bottles, broken glass, animal waste, and dried or dead plants or parts of plants (leaves, fronds, branches, etc.) accumulated as a result of littering, wind or storms.

B. Contractor shall remove all weeds in Work Areas on a two-week basis. All weeds exceeding three inches (3") in height or diameter must be physically removed. Weeds less than three inches (3") in height and diameter shall be sprayed with approved herbicides or physically removed. Weeds in hardscape areas shall be removed and sprayed in a similar manner.

C. Banners, tape, signs, graffiti, streamers, rocks, bricks and any other similar materials not in the landscape design will be removed from all Work Areas on a two-week basis, or within 24 hours after receipt of notification from Gilbert.

D. All hard surface walkways, sidewalks, and curb areas shall be maintained on a two-week basis, in a broom-swept condition, in compliance with Dust Control requirements.

E. Gravel areas and granite areas shall be raked at least monthly.

F. Debris in and around storm water inlets, scuppers and storm drains shall be removed at least every two weeks.

2.1.3 Monthly Cleaning. Raised median hardscape (concrete, pavers, stamped asphalt) shall be swept clean once a month, in compliance with the Dust Control requirements.

2.1.4 Storm Events. The Contractor shall remove all debris within twenty-four (24) hours following a storm event. Post storm cleanup is considered extra work.

2.1.5 Tree Removal. Contractor shall inform Gilbert in writing of any dead, dying or diseased trees that may need to be removed. Gilbert will inspect said tree and then make a decision on how to proceed. Contract price includes removal of all dead trees up to 15 feet in height (standing or fallen due to disease or windstorms). Gilbert designee is to be notified prior to tree removal. Care will be taken to remove damaged or fallen trees immediately out of traveled areas.

2.1.6 Disposal. All material collected shall be disposed of by the Contractor daily and in accordance with all Gilbert, County, State and Federal requirements. Debris shall not be disposed of at temporary storage sites unless approved by Gilbert. If temporary storage is approved, debris is to be removed to the point of final disposal the same day. The Contractor shall be solely responsible for any disposal fees (dumping charges).

## 2.2 DUST CONTROL

2.2.1 County Regulations. Contractor shall undertake dust control measures to comply with Maricopa County Bureau of Air Control Rules and Regulations.

2.2.2 High Pollution Advisory Days. Contractor shall not operate any blower, including any leaf blower, except while in vacuum mode on any High Pollution Advisory Day forecast by the Arizona Department of Environmental Quality (“ADEQ”). If Contractor has scheduled blowers to be used, and a High Pollution Advisory Day is forecast by the ADEQ, Contractor shall re-schedule the use of blowers to the next non-High Pollution Advisory Day at no additional cost to Gilbert and advise Gilbert of the change in schedule. It is the Contractor’s responsibility to be aware of forecast status and to communicate this information to all work crews.

2.2.3 Public Roadways. **Contractor shall not blow landscape debris onto public roadways at any time, unless approved by Gilbert representative.** With approval of Gilbert, Contractor may blow debris onto fixed locations in parking lots for ease of immediate cleanup.

2.2.4 Stabilized Surfaces. Contractor shall not operate a blower, including any leaf blower, except on surfaces that have been stabilized with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, or grass or other continuous vegetative cover, or any combination of those stabilizers.

2.2.5 Street Sweepers. If street sweepers are used on public roadways, such work must be conducted with street sweepers that meet the South Coast Air Quality Management District Rule 1186 Street Sweeper Certification specifications for pick-up efficiency and PM-10 Emissions in effect on January 1, 2007.

2.3 **RAISED MEDIANS; GRANITE**. Any pavers found damaged should be reported to the town when discovered. Matching granite is to be added in areas where granite has worn away due to traffic or other reasons; Gilbert will approve addition of granite and reimburse Contractor for the costs of the granite and the extra work rates will apply for the any labor involved. Erosion shall be back filled and raked as part of general maintenance and is considered extra work.

2.4 **MOWING**

2.4.1 Cleaning. Prior to mowing, the area shall be cleaned and free of all debris/garbage.

2.4.2 Bermuda Grass:

A. All lawns within Work areas shall be mowed evenly and edged to a cutting height of one inch +/- one quarter (1/4) inch, and maintained, generally, to the following schedule:

April 1 through September 30: Lawns shall be mowed and edged at least once per week. Lawns shall be mowed at three (3) inches in height as frequently as required to ensure that the maximum height of the grass shall not exceed four (4) inches.

October 1 through November 30: Lawns shall be mowed and edged at least every eight (8) to twelve (12) days. Lawns shall be mowed as frequently as required to ensure that the maximum height of the grass shall not exceed three (3) inches.

December 1 through January 31: Lawns shall not be mowed but shall cleaned free of debris, leaves and weeds at least once per week.

February 1 through March 31: Lawns shall be mowed as frequently as required to ensure that the maximum height of the grass shall not exceed three (3) inches.

B. Mowing equipment for Bermuda grass shall be walk behind rotary type. Mower blades shall be sharp, and mowing should be conducted to avoid following the same pattern for each mowing. Bermuda grass clippings shall be collected and removed as debris except as directed by Public Works Field Operations Manager. All mowers shall be equipped with an attachment designed to catch/collect all the grass clippings; this attachment must be used while mowing.



2.4.3 Edging. Lawn edging shall be done at time of mowing. A string trimmer affixed with a guard is to be used. Level edging is required, not chamfered. Level edging shall be used at curbing, sidewalks, dry well heads, irrigation boxes, concrete back flow footings, mail station footings, around wells for trees and bushes and the like.

2.4.4 Cleanup. Prior to leaving turf areas all sidewalks, driveways and curbs shall be cleaned of all debris including grass clippings and removed by the contractor.

2.4.5 Irrigation System Damage. An irrigation inspection shall be completed immediately following any mowing event or when any power equipment is used in a turf area. Any damage to the irrigation system, including but not limited to sprinkler heads, caused by Contractor while mowing or edging or other Work shall be repaired by Contractor at its own expense. Gilbert has discretion to determine whether damage was caused by Contractor's employees, which discretion must be reasonable and based on evidence.

2.4.6 Other Damage. Any other damage to mailboxes or structures caused during any work in turf areas shall be repaired by the contractor at their own expense. Gilbert has discretion to determine whether damage was caused by Contractor's employee, which discretion must be reasonable and based on evidence.

2.5 **CHEMICAL CONTROL OF LAWN**. If Contractor uses chemical control of lawns in lieu of or in addition to edging, herbicides shall not be applied more than a twelve-inch (12") distance out from chain link fences, signposts, or play equipment. Chemical control shall not be sprayed on any trees. Contractor shall follow all procedures for herbicide applications in accordance with law and is responsible for proper herbicide applications as set forth below.

## 2.6 **WEED CONTROL**

2.6.1 Certified Applicator. Contractor shall provide an employee or agent certified by the Arizona Structural Pest Control Commission to make herbicide, insecticide, fungicide, pest control or similar applications.

2.6.2 Lawns. Weeds in lawn areas shall be controlled with chemicals or hand tools in such a manner and at such intervals that their height does not exceed three inches (3") in height or width. Mowing is not considered a weed control measure.

2.6.3 Weed Free. All Work Areas, including but not limited to planters, ground cover, gravel cover, bare dirt, and desert landscape areas shall be kept free of grasses, weeds and other undesirable emerging vegetation.

2.6.4 Herbicide Schedule.

A. Pre-Emergent Weed Control in Non-Lawn Areas: Weeds shall be controlled with herbicide at least two (2) times per year. The summer application will be July 1-July 31 and the winter application will be January 1- January 31 of each year. The Town has the digression to modify the application dates. All debris/leaves must be removed from the areas designated to be sprayed with Pre-Emergent before any chemicals are applied.

B. Post-Emergent Weed Control: Herbicides are to be used if needed and are considered the preferred and appropriate control method for weeds less than three inches (3”) in width or diameter. Weeds exceeding three inches (3”) in width or diameter must be physically removed.

2.6.5 Procedures for Herbicide Applications. The Contractor shall submit a schedule for herbicide applications, and receive approval from Gilbert for the schedule, two (2) weeks prior to commencing Work. Schedule will include the type of herbicide(s) to be used and the proposed date and rate of application. Gilbert reserves the right to accept, reject, or modify the type of herbicides to be used and the herbicide schedule. The herbicides must be effective for the type of noxious weeds being treated. The Contractor shall furnish all equipment and labor necessary for the herbicide applications. Gilbert will purchase and distribute chemicals needed for all herbicide applications. All other costs associated with weed control will be paid by Contractor.

2.6.6 Proper Herbicide Applications. The Contractor shall be responsible for the application of all herbicides and chemicals in accordance with law. The Contractor shall use legally approved chemical herbicides in proportions to the manufacturer’s recommendations. Plants killed or severely damaged by the use of herbicides shall be replaced immediately at no cost to Gilbert, with a comparable size and quality nursery stock. The treated soil of the affected plant(s) and planting pit shall be treated with activated charcoal and other soil amendments required to enhance the potential survival and growth of the existing or replacement plants. The treatment and materials shall be furnished at no cost to Gilbert.

## 2.7 Shrub CARE

### SHRUBS

2.7.1 Shrub Removal and Replacement. All shrubs that must be removed whether due to Storm events, Hazardous removal, Diseased, Dead, Dying or for any reason deemed necessary by the Town must be removed within 24 hours. All Shrubs will be replaced at the cost of the Town unless replacement is due to Contractor neglect.

2.7.2 Standards. All care of shrubs, including but not limited to planting, fertilizing, trimming and pruning, and disease control shall be performed accordance with ISA/ANSI standards and Gilbert Public Works Department standards (to be provided to Contractor). If there are conflicting standards, the Gilbert Public Works Department standards will apply.

2.7.3 General Care. Contractor shall maintain shrubs and in a healthy, growing condition by performing necessary operations, including the following:

A. All shrub wells will be maintained for retention of water. In turf areas, an area of no growth extending approximately twelve inches (12”) in diameter around tree trunks or shrubs shall be maintained.

B. Prune and shape only as necessary to maintain the natural healthy growth of the shrub, to maintain growth within space limitations. Shrubs shall not be trimmed into geometric shapes.

C. Contractor is responsible for trimming encroaching shrubs. The encroaching shrubs shall be trimmed to the Gilbert property line.

2.7.4 Trimming and Pruning:

A. Frost Damage: All frost damage shall be removed in the Spring (between February 15<sup>th</sup> and April 15<sup>th</sup>) per the Town standards.

B. Pruning Schedule: The Contractor shall notify Gilbert of its intent to prune or trim in writing two (2) weeks in advance and provide a proposed schedule. This schedule shall include identification of the shrubs to be trimmed. Gilbert reserves the right to accept, reject or modify this schedule. Shrub trimming shall be performed one (1) time per year as follows:

1. Winter: Trim all shrubs, plants and trees in accordance with Public Works Department Landscape Maintenance Standards; trimming shall be performed between February 1st – April 15th

C. Contractor is required to have separate crews for Shrub trimming and these crews must be separate from the General Maintenance/Cleaning Crew.

Contractor shall perform additional trimming as necessary to meet the standards set forth in this Section 2.7. This trimming shall be considered incidental and shall be performed at no additional cost to the town.

### 2.7.5 Specific Trimming Requirements.

A. Bushes are to be trimmed to maintain the Gilbert Public Works Standards except bushes in the medians shall be trimmed back to two (2) feet in height. Hedge trimmers are not to be used to trim shrubs unless approved in the Gilbert Public Works Standards.

B. All shrubs and bushes shall be trimmed to maintain a minimum distance of one and a half (18") feet from sidewalks, one and a half (18") feet from back of curb, and a distance of two to three (2-3) feet from adjacent walls or fences. Shrub and Bushes shall be trimmed to allow clear access to all light poles, signs, utility boxes and valve boxes. Shrubbery is to be kept free of weeds, grasses, leaves and debris.

C. All plantings shall be trimmed so as not to conflict with pedestrian or vehicular traffic and to maintain clear, safe visibility distances. Gilbert reserves the right to determine if visibility is satisfactory. All shrubs and bushes located within the "sight distance triangle" (600 feet) of any intersection shall be maintained at a maximum of twenty-four (24) inches above height of grade (street) surface or removed as Extra Work to the Town.

D. Sidewalks shall always remain clear. Tree limbs shall have a minimum height of eight and one half (8 1/2) foot vertical clearance over the ground and traveled ways. Hedge trimmers are not to be used. All trimmings shall be disposed of as daily debris.

2.7.6 Encroaching Vegetation: Contractor shall maintain encroaching vegetation to Gilbert's property line. In the event the encroaching vegetation has not previously been maintained to Gilbert's property line or has significantly intruded over Gilbert's property line (such as a large overhanging tree), Gilbert may approve trimming of such encroaching vegetation as Extra Work. Following the initial pruning event approved as Extra Work, Contractor shall maintain the encroaching vegetation as part of the regular monthly Contract expense.

## 2.8 PEST CONTROL

2.8.1 Spraying or Dusting. Spraying or dusting shall only be required when necessary to prevent a plant or tree from being damaged by an organism that can normally be controlled only by spraying or dusting. When spraying or dusting is required, special care shall be exercised to prevent unnecessary discomfort to the people in the area. When spraying or dusting, the instructions on the label shall be followed explicitly and special care shall be exercised in application.

2.8.2 Program. The Contractor shall establish a continuing program to control pests including ants and rodents and submit the program to Gilbert for approval. Requests for approval must include the following information: The pest to be controlled, method of control and product labels. The Contractor shall complete a Pesticide Spray Log for any pesticides used

and submit them with monthly payment invoices. The Contractor is responsible to provide all labor and equipment necessary for pest control.

## 2.9 **REPLANTING AND REPLACEMENT OF PLANTS**

2.9.1 **Report.** Contractor shall notify Gilbert within 24 hours upon discovery of any damaged or badly distressed plants, including lawns, shrubs, and other vegetation.

2.9.2 **Replacement.** Whenever a plant, shrub or tree dies as a result of vandalism, storm damage, age, or uncontrollable pest or disease or other cause beyond the control of the Contractor, Gilbert may, at its option and expense, furnish a replacement, for said plant, shrub, or tree. If the plant, shrub or tree dies as a result of neglect, inadequate care or inadequate maintenance by Contractor, the replacement item and required labor shall be provided by the Contractor at his expense. All replacement plants furnished by Contractor must be of equivalent size, quality, and species as the original. Gilbert, at its sole discretion, shall determine whether a plant, shrub or tree needs to be replaced and the schedule for that replacement and the Contractor shall obtain Gilbert's approval before replanting.

## 2.10 **TURF IRRIGATION**

2.10.1 **In General:** Watering shall be scheduled by the supervisor on automatic controllers in quantities and frequencies consistent with seasonal requirements of the plant materials in the landscape. Controller programs will be adjusted in accordance with the season, soil condition and age of plant material. Irrigation check sheets are to be kept up to date and accurately indicate when inspections have occurred and note any changes to irrigation run times and any repairs completed.

### 2.10.2 **Inspections:**

All controllers, sprinklers and emitters for lawns (turf) shall be inspected on a weekly basis, including but not limited to the following:

1. Inspect controller to ensure it is functioning properly;
2. Turn on each station from the controller and inspect each sprinkler to ensure it is spraying efficiently and in the appropriate direction;
3. Inspect for leaks, breaks, and any issue causing the system to function improperly or waste water;

4. Inspect all valves, pressure regulators, shutoff valves, and other similar equipment to ensure they are functioning properly and not leaking. Valve boxes shall be cleaned as needed.

5. Complete the irrigation inspection report and leave it in the controller box for Gilbert to review. Contractor shall maintain its own separate copy of the report.

#### 2.10.3 Repairs:

A. Damages by Contractor. Any damage to the irrigation system caused by the Contractor or their equipment or while performing routine maintenance shall be repaired by the Contractor with no charge to Gilbert. All repairs shall be made between one watering cycle and the next; if these repairs cannot be made in that time frame, notice shall be given to Gilbert in writing.

B. Ordinary Repairs/Routine Maintenance. Contractor shall perform routine maintenance to include changing solenoids, changing diaphragms, trouble shooting, plugging emitters and scheduled maintenance. Parts and materials will be supplied by Gilbert.

C. Vandalism. Damage caused by vandalism or accidental damage caused by others shall be reported promptly to Gilbert. Cost of labor and materials to perform repair is an extra charge and it shall be paid by Gilbert upon authorization. Gilbert reserves the right to have these repairs made by an independent contractor or to be made by Gilbert.

D. Controllers. Controllers that are not in proper working order shall be reported to Gilbert and Gilbert representative shall determine if the control shall be repaired or replaced. Cost of labor and materials to perform the repairs is an extra charge and shall be paid by Gilbert. Gilbert reserves the right to have these repairs made by an independent contractor or by Gilbert.

E. Repairs Classified as Extra Work. Replacement of valves, repair of damages caused by root damage and replacement of shutoff valves are classified as Extra Work. Cost of labor and materials to perform the repairs is an extra charge and shall be paid by Gilbert. Gilbert reserves the right to have these repairs made by an independent contractor or by Gilbert.

F. Emergency repairs shall be made within 24 hours of the emergency shutoff or on the next business day.

G. Gilbert at its sole discretion will determine the extent of all irrigation repairs necessary and the schedule for those repairs.

2.10.4 Shut Offs. When it is deemed necessary to turn off an irrigation system, Gilbert shall be notified in writing within 24 hours of the system having been turned off. If Gilbert or its

representative turns off any irrigation for any reason, Gilbert shall notify the Contractor in writing within 24 hours or on the next business day.

2.10.5 Time of Watering. When feasible, all watering shall be done at night or early morning Monday through Friday not on weekends. In case of daytime watering, Gilbert shall be given notification in writing and Gilbert reserves the right to accept or reject that request.

## 2.11 LANDSCAPE DRIP IRRIGATION AND MAINTENANCE

2.11.1 Irrigation Technician. The irrigation shall be a Certified Irrigation Technician and shall be familiar with:

1. Troubleshooting malfunctioning irrigation controllers
2. Troubleshooting malfunctioning irrigation valves
3. Check ohm reading on a solenoid for proper function
4. Repair broken wire with (pin tite) connector
5. Program a variety of controllers
6. Buried wire detection
7. Irrigation valve replacement
8. Proper use of a Slip-fix and Union

### A. Monthly and As Needed:

The following activities shall be performed as a regular part of the landscape maintenance program, as needed and at least 2 times a month:

1. Check plants and soil for signs of under-watering or over-watering.
2. Inspections include the following:
  - a. Inspect the irrigation controller(s) to make sure it is working and that the watering schedule is properly set for the season and vegetation type.
  - b. With each station turned on from the controller visually inspect for leaks.
  - c. Troubleshoot the irrigation system for any electrical or hydraulic faults.
  - d. Complete the inspection report and leave it in the controller for Gilbert to inspect. Contractor shall retain its own separate copy of the inspection report.
  - e. Ensure all valve box lid numbers are painted and visible with the corresponding controller station.
3. At time of inspection Contractor shall plug leaks, repair and/or replace damaged emitters, connections and tubing.

4. Plug emission points where plants have died, or replant.
  5. Bury exposed lines.
- B. Semi-Annual Maintenance  
The following activities shall be performed at least twice per year:
1. Replace batteries in controllers (battery models). Batteries are supplied by the Town.
- C. Annual Maintenance  
The following maintenance activities shall be performed at least once per year:
1. Clean valve boxes of dirt and debris.
  2. Make sure plants have adequate numbers of drip emitters for their size.
- D. Repair
1. Contractor shall perform minor repairs as part of the Contract price. Minor repairs and major repairs are generally the same as described in Section 3.11.3. Gilbert will determine if repairs are minor and routine in nature or are major and will be deemed as Extra Work.
  2. Contractor shall notify Gilbert of any major repairs that need to be made. Gilbert will approve major repairs as a change order or may contract out that work to another company.
- E. Watering - Scheduling Technique
1. Water conservation shall always be practiced when watering.

## 2.12 CONTROL OF WORK, MATERIAL, AND WORKMANSHIP

### 2.12.1 RESERVED

2.12.2 Material. Seed, fertilizer, herbicides, insecticides and plants required for the Work shall be purchased by Gilbert. Alternatively, Gilbert may require Contractor to purchase such materials and Gilbert will reimburse Contractor for the same upon presentation of invoice. If Contractor is responsible for purchase, Gilbert may request Contractor to obtain three (3) written quotes for the materials.



### 2.12.3 Contractor's Equipment

A. The Contractor shall provide and maintain during the entire period of this contract, equipment sufficient in number, condition and capacity to efficiently perform the Work.

B. All vehicles must be maintained in good repair, appearance and sanitary condition at all times. Gilbert reserves the right to inspect the Contractor's vehicles at any time.

C. All vehicles must have Town approved arrow boards and cones (3') for proper safety traffic control.

### 2.12.4 Contractor's Quality Control

The Contractor shall make regular inspections of the Work area for the purpose of quality control to maintain compliance with Gilbert's specifications. The Contractor's quality control inspector shall review inspection reports and make in the field inspections of the Work before submitting an invoice to Gilbert for Work performed. Daily reports must be submitted to Gilbert's Contract Representative by 10:00 a.m. on the first Working Day following the day the work was performed.

### 2.12.5 Quality Assurance by Gilbert and Appeals

A. Gilbert will monitor the Contractor's performance by random sampling to ensure Contractor compliance with the requirements of the contract. In addition, Gilbert will inspect all reported deficiencies. In the event a deficiency exists, the Contractor will be required to explain in writing why performance was unacceptable, how performance will be returned to acceptable levels, and how reoccurrence of the problem will be prevented in the future. The Contractor will not be paid for services not rendered in accordance with the standards set forth in this Contract.

B. Gilbert's Contract Representative or his authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. The Contractor may appeal any decision to the Public Works Director and must provide substantiating documentation in all appeals.

### 2.12.6 Contractor's Employees

A. Identification. Contractor will provide the name, address and a business phone number of all employees to Gilbert. Contractor's employees shall be required to wear a clean uniform bearing the Contractor's name. Employees who normally and regularly come into direct contact with the public shall bear some means of individual identification, such as a name tag or

identification card. All employees shall be in possession of the necessary identification to comply with Federal laws.

B. Minimum Qualifications Contactor's employees shall have adequate experience and skill to perform the Work. Unless otherwise agreed to by Gilbert, at any time when the Contractor is performing Work, Contractor shall bring a full team of workers as follows:

1. One full-time, 40 hrs a week, Field Supervisor- The Field Supervisor must be available to address problems, conduct field inspections, and coordinate issues with Gilbert staff. The Field Supervisor should not engage in landscape maintenance work unless approved in advance by Gilbert. The Field Supervisor may be assigned as the quality control inspector for Contractor. The Field Supervisor must be able to speak, read and write in English and Spanish if Spanish-speaking Landscape Maintenance Workers are used for the Work. The Field Supervisor shall have a working cell phone with them during all regular Work hours so that they may be reached by Gilbert staff. Contractor is responsible for payment of all cell phone charges.

2. One full-time, 40 hrs a week, Work Crew Leader- The Work Crew Leader must be available to instruct and assist Landscape Maintenance Workers with daily tasks. Crew Leader must have a phone and be able to be reached during working hours.

3. One full-time, 40 hrs a week, Irrigation Technician- The Irrigation Technician must be available for random checks and repairs of the irrigation systems. Contractor's other workers shall not perform any irrigation work unless approved by the Irrigation Technician is present to observe the work as performed. Irrigation Technician must have a phone and be able to be reached during working hours. Also, the Irrigation Technician must have their own vehicle and that vehicle must be equipped with standard irrigation repair tools and Town supplied repair parts. The Town retains the right to review the qualifications of the Irrigation Technician and administer a Town authorized qualifications exam.

4. Landscape Maintenance Workers- Three (3) crew members shall be retained to perform the Work to Contract specifications and standards. All crews for General Maintenance / Cleaning, Tree Trimming and Shrub Trimming shall have separate crews.

5. If the Town's contract administrator does not feel the Crew Leader or Irrigation Technician is qualified, the contractor will remove him / her from that position and replace them with a qualified replacement.

6. International Society of Arboriculture ("ISA") Certified Arborist(s). A Certified Arborist shall oversee all care of trees and bushes, including, but not limited to planting, fertilization, disease control, trimming and pruning. A copy of the current certification

must be provided to Gilbert as part of the bid package and at any time upon request.

**Contractor's workers shall not perform any trimming or pruning unless a Certified Arborist is present to observe the work as it is performed.** The Certified Arborist shall

conduct training of all workers in English and Spanish as necessary for a complete understanding prior to performing any Work. Records of the training provided to each person shall be provided to Gilbert.

7. ASPCC License. Contractor shall provide a worker licensed by the Arizona Structural Pest Control Commission to make any insecticide, pesticide, or herbicide applications to the Work areas if these services are included in the contract. Copies of the current licenses (applicator, qualifying party) must be provided to Gilbert as part of the proposal package and at any time upon request.

8. Tree Division. Contractor shall have a Tree Division within their company.

C. Driver's License. Employees driving the Contractor's vehicles shall at all times possess and carry a valid vehicle operator's license issued by the State of Arizona which is proper for such vehicle.

D. Conduct. Contractor's employees and officers shall not identify themselves as being employees as Gilbert. Employees shall conduct themselves in such a manner as to avoid embarrassment to Gilbert and shall be courteous to the public.

#### 2.12.7 Deductions

A. In the event of failure of the Contractor to perform the work on the Work areas or any portion thereof in accordance with the specifications, Gilbert shall notify the Contractor in writing of any such deficiency and require correction of the deficiency within the time period specified in the notice, Gilbert will determine the deficient categories of the work and deduct payment for such categories of work from the payment due Contractor. Gilbert may also make deductions for failure to provide in whole the landscape services according to in Section 2.2.3, **Breach of Contract** of these Contract Documents.

B. For deficiencies in work, Gilbert will make deductions from payment based on the categories and unit prices specified in its price sheets, except Gilbert reserves the right to deduct up to 300% of the monthly unit price bid for Weed Control (Standard Specification Section 3.5) in the event weed control is not performed to Gilbert standards during the months when week growth is most rampant (February, March, April, May).

C. Contractor further specifically agrees as a condition of this Contract that if Gilbert reasonably finds that a category of work is in whole or in part deficient, and the Contractor has failed to timely cure such deficiency after notice, Gilbert may deem the entire category of work deficient for purposes of deductions from payment.

D. Gilbert in its sole discretion may consider the Contractor's original proposal estimates for the purposes of calculating deductions from payment. Any decision of Gilbert concerning deductions is final.

E. In addition to or in lieu for the deductions set forth above, deductions from payment may be made for any of the following:

<u>Action:</u>	<u>Deduction Amount:</u>
1. Gilbert re-inspection per map page	\$50/re-inspection
2. Failure to respond to emergency calls within a specified time.	\$50/event
3. Failure to correct deficiency within specified re-work time per map page.	\$50/day
4. Field Supervisor not available, or failure to perform inspections.	\$50/day
5. Specified irrigator not in his/her zone that day.	\$25/day
6. Failure to submit daily report on time.	\$50/day

**EXHIBIT B**  
**CONTRACTOR'S KEY PERSONNEL AND SUBCONTRACTORS**

KEY PERSONNEL:

Jose Hernandez  
Thom Krepelka  
Fabian Soto  
Ray Rivera  
Duane Simpson  
Christopher Scheurell  
Alfred Panzella  
Joe Richie  
Vanessa Hernandez

SUBCONTRACTORS:

N/A

**EXHIBIT C**  
**SCHEDULE OF SERVICES**

N/A

**EXHIBIT D  
PAYMENT SCHEDULE**

A. Compensation

1. The consideration of payment to Contractor, as provided herein shall be in full compensation for all of Contractor's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.

<b>Description</b>	<b>Amount</b>
<b>Landscape Services – Zone D</b>	<b>\$424,546.89 – see attached</b>

B. Method of Payment

Invoices shall be submitted to Gilbert via Gilbert's authorized representative.

Artistic

PROPOSAL PRICE SHEET

ZONE D

REGULAR WORK RATES

\*square foot prices may only be calculated to four (4) decimal points

General Maintenance/Cleaning

Landscaped –(irrigated)

810,547 sq.ft. @ \$0.0092 per sq.ft. X 26 = \$ 197,882.84

Minimum crew size - 4

Non-Landscaped – (non-irrigated)

4,102,635 sq.ft. @ \$0.0008 per sq. ft. X 26 = \$ 85,334.80

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Minimum crew size - 4

Irrigation Checks

Full time Certified Irrigation Technician - **All** systems inspected 2 times per month. \$72,960

Spraying Pre-emergent

4,176,205 sq. ft. @ \$0.0070 per sq.ft. X 2 = \$ 25,057.21

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REGULAR WORK RATE TOTAL- \$ 377,210.91



**SHRUB TRIMMING**

\*\*\*Shrub trimming crew must be a separate crew from the general maintenance/cleaning crew. Square foot prices may only be calculated to four (4) decimal points only.

**WINTER/SPRING TRIMMING**

688,965 sq. ft. @ \$0.0207 per sq. ft. = \$ 13,985.98

*Between February 15<sup>th</sup> and April 8<sup>th</sup> per the Town of Gilbert landscape maintenance guidelines and shall include all shrubs in medians, cleaning inside all plants, encroaching plants and separating unlike plants.*

*Minimum crew size - 4*

**SHRUB TRIMMING TOTAL-** \$ 13,985.98

**EXTRA WORK RATES**

\*\*\*\*\* Extra work is not guaranteed but will be calculated as part of the Total Bid Price. Quantities are estimates only. All extra work rates shall include any Hand Tools, Vehicles, Equipment, Traffic Control and all other associated costs.

Crew Forman \$ 24.00 per hr. X 280 hrs. = \$ 6,720.-

Irrigation Tech \$ 35.00 per hr. X 400 hrs. = \$ 14,000.-

Laborer \$ 21.00 per hr. X 600 hrs. = \$ 12,600.-

**EXTRA WORK RATE TOTAL-** \$ 33,320.-

REGULAR WORK RATE TOTAL - \$ 377,240.91

SHRUB TRIMMING TOTAL - \$ 12,985.98

EXTRA WORK RATE TOTAL - \$ 33,320.-

PROPOSAL GRAND TOTAL - \$ 424,546.89