Staff Summary Report

Tempe

Council Meeting Date: 01/10/08 **Agenda Item Number:** _____

SUBJECT: Request to award on-call construction contracts to C&W Sons Enterprises, Inc., ACR Contracting, Inc., and BCS Enterprises, Inc. to perform on-call job order contract for Demolition of Commercial and Residential Property.

DOCUMENT NAME: 20080110PWDR02 **ENGINEERING ADMINISTRATION (803-02)**

SUPPORTING DOCS: Yes

COMMENTS: On-call construction contracts for an annual amount not to exceed $1,000,000 and an individual job order amount not to exceed $1,000,000 with C&W Sons Enterprises, Inc., ACR Contracting, Inc., and BCS Enterprises, Inc., subject to execution of the final written contracts.

PREPARED BY: TOM WILHITE, PRINCIPAL CIVIL ENGINEER (x2921)

REVIEWED BY: ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)

LEGAL REVIEW AS TO FORM: ANDREW CHING, CITY ATTORNEY (x8575)

FISCAL NOTE: Funding for these contracts will be provided from each C.I.P. project for which each job order is performed. Each job order will be priced by the contractor in accordance with the job order contract. Each negotiated job order scope and price exceeding $30,000 will be presented for City Council consideration.

RECOMMENDATION: Award on–call job order construction contracts setting the maximum amount of each individual job order at $1,000,000.

ADDITIONAL INFO: The job order contracting method of construction uses an on-call contractor, who has been selected using a quality based selection method, who will perform multiple capital improvement projects. These projects will have an individual constructed value of no more than $1,000,000.

These contracts would be for a term of one year with an option to renew for up to two years in two twelve month increments. During the contract term, construction work is performed as a series of individual job orders. Each job order is defined cooperatively by staff and the job order contractor. A scope, schedule, and price are established for each individual job order, which will then be recommended to Mayor and Council for award of the individual job order if it exceeds $30,000. The option to extend the job order contract will be evaluated by staff for recommendation to Mayor and Council based on the job order contractor's successful performance of individual job orders and the needs of the City.

A.R.S. § 34-601 et seq. allows cities to use job order contracting. A.R.S. § 34-603 (J)(1) requires the City Council to set the maximum amount of an individual Job Order. A.R.S. § 34-605 (B) requires the City to make certain determinations in writing before using multi-term job order contracts.

C&W Sons Enterprises, Inc., ACR Contracting, Inc., and BCS Enterprises, Inc. were selected by the review committee for the short list of qualified firms for job order construction using a qualification based process consistent with Arizona Revised Statutes.

Pursuant to A.R.S. § 34-605 (B), staff has determined that the City's estimated construction requirements cover the period of the contracts and are reasonable and continuing, and that the contracts will serve the best interests of the City by encouraging effective competition, so that the use of multi-term job order contracts is appropriate.

This award is conditioned upon execution of final written contract documents and approved submittals of any required ensure to insure affidavit, insurance certificates or other documents. Payment and performance bonds will be required for each job order.

Approved by Glenn Kephart, Public Works Manager

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

For

DEMOLITION
OF
COMMERCIAL AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

C & W SONS ENTERPRISES, INC.

CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

Vice Mayor – J. Hut Hutson

Mark Mitchell	P. Ben Arredondo
Barbara J. Carter	Onnie Shekerjian
Shanna Ellis	J. Hut Hutson

City Manager – Charles W. Meyer

City Engineer – Andy Goh, P.E.

2008

TABLE OF CONTENTS

VOLUME 1

Notice to Job Order Contractor N-1

CONTRACT C-1

SECTION 1 - Terms and Definitions C-1

SECTION 2 - Scope of the Work C-7

SECTION 3 - Contract Price and Job Order Price C-8

I. Contract Price C-8
II. Job Order Price C-8

SECTION 4 - Time of Completion C-8

I. Contract Time C-8
II. Job Order Time C-10

SECTION 5 - General Provisions C-10

I. JOC Contractor Requirements and Conditions C-10
II. Award and Execution of Contract C-11
III. Job Order Scope of Work C-14
IV. Control of Work C-16
V. Control of Materials C-20
VI. Legal Regulations and Responsibilities to Public C-20
VII. Commencement, Prosecution and Progress C-27
VIII. Measurement and Payments C-29

SECTION 6 - Special Provisions C-32

I. Key Contacts C-32
II. Uniformed Police Officers C-32
III. Open Trenching and Steel Plates C-32
IV. Confidentiality of Plans and Specifications C-32
V. Irrigation and Landscape Repair C-33
VI. Sequence of Construction C-33
VII. Coordination with Other Contractors C-33
VIII. Partnering C-34
IX. Demolition Services for Commercial and Residential Properties ... C-35

Table of contents continued

SECTION 7 – Forms C-36

Subcontractor List SB-1

Performance Bond B-1

Payment Bond B-3

JOC Contractor's Affidavit (Settlement of Claims) AFF-1

JOC Contractor's Affidavit (Health Insurance) AFF-2

SIGNATURE PAGE S-1

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

NOTICE TO JOB ORDER CONTRACTOR

Each Job Order Proposal by the Job Order Contractor shall be submitted to the City of Tempe, Arizona, Public Works Department, Engineering Office, City Hall West Garden Level, 31 East 5th Street, Tempe, Arizona 85281. All correspondence for the Job Order shall reference an assigned City of Tempe project title and project number.

The proposed work for each Job Order will be determined in accordance with the provisions of this Contract and shall be accomplished in accordance with the "Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction", and "The City of Tempe Supplements thereto" except as otherwise set forth in the Contract Documents.

The JOC Contractor is required to submit, from its insurance carriers, a three (3) year history of both its Experience Modification Factor (EMOD) and its loss ratio. In addition, all Contractors are required to submit an affidavit certifying that its company and all of its subcontractors, defined as doing work in excess of $30,000.00 as determined at the start of each project, will have and will continue to have during the course of the contract health insurance in force for all employees. The employer must offer insurance to employees for its eligible dependents.

Work shall not start until after the date of issuance of a Job Order Notice to Proceed and shall be completed within the number of calendar days shown in the Job Order.

The City of Tempe reserves the right to reject the JOC Contractor's Proposal.

Please direct any questions to the City of Tempe Engineering Division at (480) 350-8200.

Andy Goh, P.E.
Deputy PW Manager/City Engineer

12/20/07
Date

CONTRACT

THIS CONTRACT is made and entered into this 10th day of January, 2008, by and between the City of Tempe, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona hereinafter designated the "City", and C & W Sons Enterprises, Inc., of the City of Litchfield Park, County of Maricopa, and State of Arizona, hereinafter designated as the "JOC CONTRACTOR."

The City intends to have a number of Projects which will be constructed as Job Orders.

To undertake the construction administration of said Project, the City will utilize a "Construction Manager Professional". The name of the Construction Manager Professional will be provided at the preconstruction meeting for each Job Order.

The JOC Contractor has represented to the City the ability to provide or procure construction and design services. Based upon this representation, the City engages the JOC Contractor to provide these services.

All work done under this contract shall be accomplished in accordance with the "MAG Specifications" except as may be modified in the Contract Documents. In the event of any conflict between these Contract Documents and the requirements of the MAG Specifications, these Contract Documents shall prevail.

The JOC Contractor, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees, for itself, its heirs, administrators, successors, and assigns as follows:

SECTION 1. TERMS AND DEFINITIONS

In the event of any conflict between the terms and definitions set out below and the terms and definitions found in the "MAG Specifications", the terms and definitions set out below shall prevail in interpreting these Contract Documents unless the context requires otherwise.

Addendum – A written modification of the Contract Documents after the Contract Documents have been issued by the City Engineer but ten (10) days prior to City Council Award of this Contract. This definition replaces the MAG Specification definition of Addendum.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while delivering a quality and functional Project that meets City requirements.

Amendment – A written modification of the terms of this Construction Services Contract.

Award – The formal action of the City Council to accept this Contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

City – The City of Tempe, a public body or authority and municipal corporation, with whom the JOC Contractor has entered into this Contract and for whom the services are to be provided pursuant to this Contract. The City is the Agency or Owner or Contracting Agency for purposes of this contract. This definition replaces the MAG Specification definition of City.

City's Contingency – A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the City's contingency will be set solely by the City and will be in addition to the project costs included in the JOC Contractor's Job Orders.

Construction Fee – The JOC Contractor's administrative costs, home office overhead, and profit, whether at the JOC Contractor's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are included in the General Conditions of the construction phase.

Construction Manager Professional – The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth in this Contract and in the Construction Manager Professional's Contract with the City.

Contract – This written document, including its exhibits and attachments signed by the City and JOC Contractor covering the Job Order Construction Services and including other documents (the "Contract Documents") itemized and referenced in or attached to and made part of this Contract. This definition replaces the MAG Specification definition of Contract.

Contract Documents – This Contract, exhibits, attachments, "General Provisions", "Special Provisions", "Technical Specifications", "Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction" as amended by the City of Tempe, "Plans", "Performance Bonds", "Payment Bonds", all Written Amendments, Addendums and Change Orders to this Contract and any other documents so designated in this Contract. This definition replaces the MAG Specification of Contract Documents.

In case of a discrepancy or conflict, the order in which the Contract Documents govern is as follows from the highest to lowest: Special Provisions, Technical Specifications, Plans, General Provisions, Tempe Supplement to the M.A.G. Specifications, Tempe Supplement to the M.A.G. Details, M.A.G. Standard Specifications and Standard Details.

Contract Price - means the amount or amounts set forth in this Contract subject to Contract Amendments in accordance with this Contract.

Contract Services - means the services required by the Contract Documents.

Contract Time - means the time set forth in this Contract.

Cost of the Work – The direct costs necessarily incurred by the JOC Contractor in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the JOC Contractor's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Cost Model – A breakdown of the scope of the Project that is initially developed by the JOC Contractor during the conceptual design phase and based on information from the Project Team and the JOC Contractor's records of similar projects. The model will evolve as the design progresses and be maintained by the JOC Contractor throughout the design phase and will include any assumptions and clarifications made by the JOC Contractor. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team.

Day(s) – Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the JOC Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC Contractor during the design phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule of Values, Alternative System Evaluations, Procurement Strategies and Plans, Cost Estimates, Construction Market Surveys, Cash Flow Projections, GMP Proposals, Subcontractor Procurement Plan, Subcontractor Contracts, Subcontractor Bid Packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

Design Engineer – The person, firm or corporation having a contract with the City to furnish design services for this project.

Design Engineer's Consultant – A person, firm, or corporation having a contract with the Design Engineer to furnish services required of the Design Engineer, as the Design Engineer's independent professional associate or consultant with respect to the Project.

Design Professional - A qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order.

Differing Site Conditions - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

Duration of the Work - The number of Days from a Job Order Notice To Proceed to Substantial Completion.

Effective Date of this Contract – The date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the two parties signs this Contract.

Engineer – The City Engineer acting directly or through his duly authorized representative. This definition replaces the MAG Specification definition for Engineer.

Final Acceptance – The completion of a Job Order as prescribed in each Job Order.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the JOC Contractor during the construction phase: payroll costs for the project manager or construction manager (but not both) for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of consultants not in the direct employ of the JOC Contractor or subcontractors; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

JOC Contractor – Firm selected by the City to provide or procure construction and design services as detailed in this Contract.

JOC Contractor's Representative - The person described in each Job Order.

JOC Contractor's Senior Representative - The person described in each Job Order.

Job Order - A specific written contract between the Owner and the JOC Contractor for a Job Order including a scope, a Job Order Price, a Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and the Job Order Contractor's proposal either by reference or inclusion.

Job Order Price - The sum of the maximum cost of the Work for a Job Order, including, but not limited to, the construction price of the JOC Contractor(s); the construction price of the subcontractor(s); the price of the subconsultant(s); Labor; Overhead and Profit; general conditions fee; taxes, bonds, insurances costs; and the JOC Contractor's contingency as proposed and approved pursuant to this Contract. The approved Job Order Price will be made part of this Contract by executing a Job Order.

JOC Payment Request - The City form used by the JOC Contractor to request progress payments for Job Orders in accordance with this Contract.

Job Order Time - The time from the Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing a Job Order.

Laws and Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Legal Requirements - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"MAG Specifications" – Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction, latest edition, and the City of Tempe Supplement thereto.

Notice of Award – The written notice by the City to the JOC Contractor stating that upon compliance by the JOC Contractor with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver this Contract. This definition replaces the MAG Specification definition for Notice of Award.

Notice to Proceed – A written notice given by City to the JOC Contractor fixing the date on which the JOC Contractor will start to perform the JOC Contractor's obligations under this Contract. This definition replaces the MAG Specification definition for Notice to Proceed.

Plans – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the JOC Contractor during the construction phase and which have been prepared or approved by the Design Engineer and the City.

This definition includes Plans that have reached a sufficient stage of completion and have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g., conceptual design Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but "NOT FOR CONSTRUCTION"). Shop drawings are not Plans as so defined. This definition replaces the MAG Specification definition for Plans.

Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC Contractor to illustrate materials or equipment for some portion of the Work.

Project – The total design and construction of which the design services and construction Work to be provided may be the whole or a part of a Job Order. This definition replaces the MAG Specification definition for Project.

Project Team – Construction services team consisting of the Design Professional, JOC Contractor, the City (Water Utilities Department representatives, Design Project Manager, Construction Project Manager), and Construction Manager Professional and other stakeholders who are responsible for making decisions regarding the Project. The other stakeholders will be identified in the preconstruction conference.

Record Documents – The documents created pursuant to this Contract.

Samples – Physical examples of materials, equipment or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC Contractor and submitted by the JOC Contractor to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

Site – The land or premises on which a Job Order is located.

Specifications – The part(s) of the Contract Documents labeled as Technical Specifications for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. This definition replaces the MAG Specification definition for Specifications.

Subcontractor or Subconsultant – An individual, firm, entity or corporation having a direct contract with the JOC Contractor who undertakes to perform a part of the design phase services or construction phase Work at the site for which the JOC Contractor is responsible. This definition replaces the MAG Specification definition for Subcontractor.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City, at the City's discretion, can occupy and use the Project or a portion thereof for its intended purposes.

Partial acceptance of buildings shall include, as a minimum, (a) approval by City Fire Marshall and local authorities including issuance of the Certificate of Occupancy (b) all systems in place, functional, and displayed to the City or it's representative; (c) all materials and equipment installed; (d) all systems reviewed and accepted by the City; and (e) Heating, Ventilation and Air Conditioning test and balance completed at least 30 days prior to projected substantial completion.

For buildings and other projects, partial acceptance may also include (a) elevator permit; (b) draft Operation and Maintenance manuals and record documents reviewed and accepted by the City; (c) City operation and maintenance training completed; (d) landscaping and site work; and (e) final cleaning.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by JOC Contractor or any Subcontractor.

Total Float – Number of calendar days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work – Any or all of the improvements as required by the Contract Documents, and the construction, demolition, reconstruction, and repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto. This definition replaces the MAG Specification definition for Work.

SECTION 2. SCOPE OF THE WORK

The JOC Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work specified in the Job Order for which it is issued a Job Order Notice to Proceed in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for a specific Job Order in accordance with the Job Order.

The JOC Contractor shall construct the same and install the material therein for the Owner in a good and workmanlike and substantial manner and to the satisfaction of the Owner or his properly authorized agents and strictly pursuant to and in conformity with the Contract Documents and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

Minor design services may be required for some Job Orders. For those Job Orders that may require design services the Contractor shall seek the services of an Arizona registered professional to prepare plans for permitting.

The Design Professional shall maintain at least $1,000,000 Professional Liability Coverage.

All documents prepared by the Design Professional are subject to review by the City. Review by the City does not relieve any Design Professional from the professional liability associated with the documents they have prepared.

The JOC Contractor's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Contract Services. A JOC Contractor's Representative will be assigned for each Job Order. The JOC Contractor's Representative shall communicate regularly with the City and shall be vested with the authority to act on behalf of the JOC Contractor.

SECTION 3. CONTRACT PRICE AND JOB ORDER PRICE

I. CONTRACT PRICE

This Contract will have a maximum amount of $1,000,000.

II. JOB ORDER PRICE

The City intends that each Job Order performed under this Contract will average $6,000 to $8,000 in construction costs, but in no event will any Job Order exceed $1,000,000.

Each Job Order price is subject to adjustments made in accordance with this Contract.

Unless otherwise provided in the Contract Documents, each Job Order price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

The Job Order Price shall use the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor	$ _____
Allowances	$ _____
Subtotal	**$** _____
Overhead and Profit (per Table 1)	$ _____
Total	**$** _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Job Order Price Total *	**$** _____

Table 1 shows the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the Contractor's Contingency is the value used in the matrix of Table 1 for determining the overhead and profit multiplier to apply to a Job Order.

Table 1
(Job Order Price versus Overhead and Profit Multiplier)

Job Order Price *	$0 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 to $499,999	$500,000+
Overhead and Profit Multiplier	14	12	10	10	9

* The combined total of the Job Order Price is used in Table 1 for determining the Overhead and Profit Multiplier.

The agreed upon insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

Insurance Percentage:	2.28%	
Bonds (Performance and Payment)	2.5%	(first $100,000)
	1.5%	($100,000 or more)
Sales Tax Percentage	5.27%	

The JOC Contractor guarantees to bring each Job Order within the Job Order Price or JOC Contractor alone will be required to pay the difference between the actual cost and the Job Order Price.

The scope of work will vary with each Job Order. At the beginning of each Job Order, a scope conference will be scheduled to define design and construction services required of the JOC Contractor. The Job Order and related documents will be given to the JOC Contractor.

The JOC Contractor will be asked to provide a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order based on the scope meeting and the provided documents.

The City will review the submitted proposal. The City and JOC Contractor shall negotiate in good faith and, as expeditiously as possible, agree upon the Job Order Price and the Duration of the Work. Upon reaching concurrence, the parties shall execute the Job Order reflecting the terms of the Job Order.

SECTION 4. TIME OF COMPLETION

The JOC Contractor further covenants and agrees at its own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation for performing all of the work for the construction of each Job Order agreed to pursuant to this Contract and to construct the same and install the material therein, as called for by this Contract and each Job Order free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in each Job Order Notice to Proceed.

I. CONTRACT TIME

Contract Time shall commence on the Notice to Proceed date for this Contract. This Contract shall be in effect for a twelve (12) month period, or until $1,000,000 has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew for twelve (12) months or the balance of the maximum contract amount or as otherwise specified. In any event, the maximum duration of this Contract is three (3) years from its commencement date.

The option to renew will be exercised by the City or the option to renew will not be exercised by the City based on the JOC Contractor's successful performance and the needs of the City as determined by the City in its sole discretion.

The Contract will remain in full force and effect during the performance of any Job Order.

II. JOB ORDER TIME

Job Orders may be issued at any time during the duration of this Contract.

Each Job Order will include a Job Order Notice to Proceed date, Duration of the Work as determined pursuant to each Job Order and a calculated Substantial Completion date.

JOC Contractor agrees that it will commence performance of the Work and achieve the Job Order Time.

Each Job Order Time shall be subject to adjustment in accordance with this Contract.

SECTION 5. GENERAL PROVISIONS

I. JOC CONTRACTOR REQUIREMENTS AND CONDITIONS

A. LICENSES

Prior to execution of this contract, the JOC Contractor must possess a valid City of Tempe Transaction Privilege License and shall provide the Permit Number of such for validation and must carry the appropriate State of Arizona Contractor License.

The Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed work at the time of the Job Order Proposal. If the subcontractor does not have the appropriate license, the City reserves the right to reject the Proposal.

B. EXAMINATION OF PREMISES

The JOC Contractor shall visit the site of each Job Order and shall fully acquaint itself with the conditions as they exist, so that it may fully understand the facility, difficulties and restrictions attending the execution of the work.

Subcontractors shall also thoroughly examine and be familiar with the Specifications and other Contract Documents. The failure of the JOC Contractor to obtain, receive or examine any addenda to the proposed Contract Documents, or to visit the site and acquaint itself with the conditions there existing, shall not relieve it from any obligation with respect to its Job Order Proposal.

By submitting a Job Order Proposal, the JOC Contractor agrees that it has examined the site, Specifications and other Contract Documents and accepts, without recourse, all site conditions and the proposed Contract Documents.

C. GOVERNMENT APPROVALS AND PERMITS

Unless otherwise provided, JOC Contractor shall obtain or assist the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The JOC Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

The City shall be responsible for City of Tempe review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City shall also pay for utility design fees for permanent services.

JOC Contractor shall be responsible for all other permits and review fees not specifically listed in this Contract.

JOC Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the JOC Contractor's responsibility.

II. AWARD AND EXECUTION OF CONTRACT

A. EXECUTION OF CONTRACT

The form of the contract, which the JOC Contractor will be required to execute and the form of bonds which it will be required to furnish for each Job Order, are included in the Contract Documents and should be carefully examined by the JOC Contractor. The JOC Contractor will be required to execute the standard form of Contract in one (1) original counterpart within ten (10) calendar days after formal Notice of Award of Contract. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within 10 (ten) calendar days after the date of Notice of Award shall be just cause for the cancellation of the Award.

B. JOC CONTRACTOR INSURANCE AND BOND RATING REQUIREMENTS

Personal or individual bonds are not acceptable.

Bonding companies and Liability and Excess insurance carriers shall be "Best Rated A-VII" or better as currently listed in the most recent "Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company. This requirement does not apply to the Worker's Compensation/Employers Liability portion on the Certificate of Insurance.

Each such bond SHALL be executed by a surety company or companies duly licensed to do business in the State of Arizona. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

C. INSURANCE REQUIREMENTS

The JOC Contractor's attention is directed to Contractor's Insurance, MAG Specification 103.6. The insurance policies required by MAG Specification 103.6 shall additionally provide full coverage of indemnity to the City, including an increase in the minimum limits to $5,000,000 combined single limit coverage for General Liability. Prior to execution of the contract, the JOC Contractor shall furnish the City with a Certificate of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify the Project Number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination. The Cancellation Clause shall not include the phrases "endeavor to" or "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." When the project includes construction of a new building addition to an existing building, Builders Risk Insurance shall be provided for the full amount of the contract, in accordance with MAG Specification 103.6C.

D. HEALTH INSURANCE REQUIREMENTS

All JOC Contractors who enter into a contract in excess of $30,000.00 with the City of Tempe must certify that they have, and all of its major subcontractors will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-2). Major subcontractors are defined as entities doing work in excess of $30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all contractor and major subcontractor employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the contract.

All Contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at it's office and at the job site. Signs for posting will be provided by the City at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

E. BONDS REQUIRED

Prior to execution of each individual Job Order, the JOC Contractor shall provide a performance bond and a payment bond, each in an amount equal to the full amount of the agreed upon Price for that Job Order.

These bonds shall meet the requirements of Arizona Revised Statutes Title 34, Chapter 6, as amended:

1. Performance bond, one hundred percent (100%) of the Job Order Price.
2. Payment bond, one hundred percent (100%) of the Job Order Price.

F. INDEMNIFICATION

To the fullest extent permitted by law, the JOC Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the JOC Contractor, its agents, employees, or any tier of JOC Contractor's subcontractors in the performance of this Contract.

JOC Contractor's duty to defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by JOC Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the JOC Contractor, any tier of JOC Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the JOC Contractor may be legally liable.

The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

III. JOB ORDER SCOPE OF WORK

A. DESCRIPTION OF WORK

The proposed work will be defined by each Job Order. Job Orders shall be in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with Job Order Contractor's name;
b. Job Order number and date;
c. The agreed Work and applicable technical specifications and drawings;
d. The agreed period of performance and, if required by Owner, a work schedule;
e. The place of performance;
f. The agreed total price for the Work to be performed;
g. Submittal requirements;
h. Owner's authorized representative who will accept the completed Work;
i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
j. Such other information as may be necessary to perform the Work.

B. PRE-CONSTRUCTION CONFERENCE

After completion of Job Order prior to the commencement of any Work on any Job Order, a pre-construction conference will be scheduled.

The purpose of this conference is to establish a working relationship between the JOC Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

Minimum attendance by the JOC Contractor shall be a responsible company/ corporate official who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the JOC Contractor's safety officer.

The Job Order Notice to Proceed date will be established.

C. TRAFFIC CONTROL

All traffic shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions, available through the City of Tempe Transportation Division (Transportation) at 480-350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

At the time of the pre-construction conference, the JOC Contractor shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

The JOC Contractor shall have the full responsibility and liability for traffic control for this project. The JOC Contractor shall submit a Traffic Control Plan to Transportation for approval one week prior to beginning work under this contract. It shall be noted that Traffic under this contract shall include all motor vehicles, bicyclists, and pedestrians.

During construction it may be necessary to alter traffic control as approved by Transportation. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the ADOT Traffic Control Manual; or the City of Phoenix Barricade Manual, latest edition, with revisions as adopted by the City of Tempe. The most restrictive manual shall apply. No measurement will be made for traffic control. No payment will be made for traffic control. The cost thereof shall be included in the price bid for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any revisions shall be submitted to Transportation for review and approval.

In the event the JOC Contractor damages any traffic signal equipment, traffic signal conduit, and/or circuits, it shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to the JOC Contractor at twice the City's cost.

The JOC Contractor shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Transportation.

Speed limits shall be strictly enforced.

For more information, please contact the City of Tempe Transportation Division at (480) 350-8219.

D. CLEAN-UP

The JOC Contractor shall, upon completion of the Work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

E. ALTERATION OF WORK

In the event that significant changes in the scope of the work, and/or changes in the quantities due to contingencies of construction becomes necessary, such changes shall be made in accordance with Section 104.2 of General Conditions in the MAG Specifications.

The costs associated with any extra work as authorized by the contracting agency must be approved prior to the start of work. Extra work performed on an actual cost basis shall be submitted for approval within twenty-one (21) days after the completion of such work. The final costs for additional work shall also include any and all charges associated with extended general conditions or contract acceleration.

F. SUBSIDIARY WORK

All work called for in the Plans and Specifications shall be performed by the JOC Contractor and unless a specific bid item is provided for the work, then such portion of the work will be considered subsidiary to other work for which payment is provided.

IV. CONTROL OF WORK

A. INTERPRETATIONS OF DRAWING AND DOCUMENTS

If any JOC Contractor submitting a Job Order Proposal for the proposed Work or any part thereof is in doubt as to the true meaning of part of the Contract Documents, or finds discrepancies in or omissions from the Contract Documents, such JOC Contractor may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC Contractor submitting the request will be responsible for its prompt delivery. Any interpretations or corrections of the proposed documents will be made by Addendum duly issued, and a copy of each addendum will be mailed or delivered to the JOC Contractor who shall distribute the addendum to the appropriate Subcontractor(s). The City of Tempe will not be responsible for any other explanation or interpretations of the documents.

B. JOC CONTRACTOR'S REPRESENTATIVE

The JOC Contractor shall at all times be present at the work in person or represented by a foreman or other properly designated agent. Instructions and information given by the Engineer to the JOC Contractor's foreman or agent on the Work shall be considered as having been given to the JOC Contractor.

C. RELOCATION OF UTILITIES

All utilities in conflict with the new Work will be relocated by the City except as otherwise provided in the Plans and Specifications,

D. SUPERVISION BY JOC CONTRACTOR

The JOC Contractor will supervise and direct the work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the JOC Contractor as the JOC Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the JOC Contractor and all communications given to the supervisor shall be as binding as if given to the JOC Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

Nothing contained in this Contract shall be construed as establishing an employer/employee relationship, partnership or joint venture between the JOC Contractor and the City.

E. CONSTRUCTION STAKING

Construction staking will be provided by the JOC Contractor. Replacement of construction stakes that have been knocked out due to JOC Contractor's work or lack of work, weather conditions, traffic, or vandalism will be at the JOC Contractor's expense.

F. SURVEY CONTROL POINTS

Existing survey monuments shall be protected by the JOC Contractor or removed and replaced under the direct supervision of the City Surveyor or the City Surveyor's authorized representatives.

Prior to construction, it is the responsibility of the JOC Contractor to notify the City Surveyor of any survey monuments which need to be referenced off of the monument. Any monuments which are lost and have not been referenced off due to the JOC Contractor's negligence and/or lack of notification to the City Surveyor shall be replaced at the JOC Contractor's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

G. AUTHORITY OF THE CONSTRUCTION MANAGER PROFESSIONAL

The Construction Manager Professional shall act as the City Engineer's designated representative during the construction period. Construction Manager Professional shall advise on questions concerning coordination with the City of

Tempe, public safety, and quality and acceptability of materials and work performed. The Construction Manager Professional or the Construction Manager Professional's assigned inspector shall interpret the intent of the Contract Documents in an unbiased manner.

The Construction Manager Professional or Construction Manager Professional's assigned inspector shall be present on the site at times during construction to monitor the work and to maintain records for contract management. The Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract Documents so as to minimize delays in construction. The Construction Manager Professional will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

H. SHOP DRAWINGS, SCHEDULES & SAMPLES

In time for each to serve its proper purpose and function, the JOC Contractor shall submit to the Engineer such schedules, reports, drawings, lists, literature samples, instruction, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

Shop drawings and data shall be submitted to the Engineer in such number of copies as will allow him to retain four (4) copies of each submittal.

The submittal shall clearly indicate the specific area of the Contract Documents for which the submittal is made. The additional copies received by him will be returned to the JOC Contractor's representative at the job site. The Engineer's notations of the action which he has taken will be noted on one (1) of these returned copies.

The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the jobsite Contract Documents, and the fabrications furnished shall be in conformance with the same.

However, the Engineer's review of the above drawings, lists, prints, specifications, samples, or other data shall not release the JOC Contractor from its responsibility for the proper fulfillment of the requirements of this Contract nor for fulfilling the purpose of the installation nor from its liability to replace the same, should it prove defective or fail to meet the specified requirements.

I. AS-BUILT PLANS

The JOC Contractor shall provide and maintain accurate field data on a red-lined set of contract Plans, which are to be kept current and submitted as complete at the conclusion of the construction. These record Plans will be used as documentation for progress payments, and upon project completion, for the preparation of 'as-built' file Plans by the architect/engineer. All 'as-built' information shall be on 3 ml double

matte black line mylar and shall be 24" x 36" in size. Final payment will not be issued until all record Plans and as-built information are submitted by the JOC Contractor, and certified to be complete by the architect/engineer of record.

J. UNDERGROUND UTILITIES

Underground utilities indicated on the Plans are in accordance with maps furnished by the City of Tempe and by each utility company. The locations are only approximate and require verification prior to construction as mandated by City of Tempe requirements for underground street crossings and potholing.

K. INSPECTION

The JOC Contractor is responsible for complying with the Specifications and is hereby forewarned that final approval of any work will not be given until the entire project is completed and accepted. Prior to "final inspection" on any City facilities requiring a Building Permit, the JOC Contractor must call for final inspections from the Development Services and Public Works Departments of the City of Tempe. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

L. SUBSTANTIAL COMPLETION

Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC Contractor all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in a certificate of Substantial Completion.

M. BENEFICIAL OCCUPANCY

"Beneficial occupancy" is use of a facility or project, in whole or in part, by the owner for its intended purpose. This may occur even though some work of the contract remains undone.

Prior to such use or occupancy, the owner will prepare a written contract with the JOC Contractor and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

N. COMPLETION OF THE WORK

Completion of the Work is full completion of all construction associated with a contract, including, but not limited to punch list items, close out documentation, Operation and Maintenance manuals, warranties, and record Plans as certified by the Architect or Engineer of record. The JOC Contractor may be found in default of contract in accordance with MAG Specification 108.10, should project completion fall behind substantial completion by more than forty-five (45) days.

O. FINAL ACCEPTANCE & GUARANTEE

"Final Acceptance" shall mean a written final acceptance of the Work. The City Engineer shall make the final acceptance promptly after the work has been completed in accordance with the Contract Documents and after inspection is made. The work performed under this contract shall be guaranteed for a period of one year from the date of final acceptance.

V. CONTROL OF MATERIALS

A. EXCESS MATERIALS

Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC Contractor. The JOC Contractor shall, prior to commencement of the work, submit a letter to the City Engineer stating the location of disposal site(s) for all excess material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

B. QUALITY CONTROL

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Contract Documents; and it shall be the duty of the JOC Contractor to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the work.

The Engineer may, by appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon the JOC Contractor as though contained in the original Contract Documents.

At the option of the Engineer, materials to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the work. The JOC Contractor shall give the Engineer written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the work.

VI. LEGAL REGULATIONS AND RESPONSIBILITIES TO PUBLIC

A. CONFLICT OF INTEREST

This contract is subject to cancellation under the provisions of ARS §38-511.

B. EMERGENCIES

In any emergency affecting the safety of persons and/or property, JOC Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The MAG Specification 107.5 applies to this provision.

C. NON-DISCRIMINATION

In connection with the performance of work under this Contract, the JOC Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or disability. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The JOC Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of the Non-Discrimination clause.

D. HAUL PERMIT

In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, the JOC Contractor will obtain a Maricopa County Earth Moving Permit as required under Rule 200 of the Maricopa County Division of Air Pollution Control Requirements. This permit will require that a Control Plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. The Control Plan should be submitted to the City of Tempe for review prior to County submittal to ensure that all elements of the planned operation are covered. Please contact the Maricopa County Division of Air Pollution Control at 602-506-6700 for additional details.

In addition, all Contractors hauling fill or excavation materials, where the haul exceeds five thousand (5,000) cubic yards or when the duration of the haul is more than ten (10) working days, are required to obtain a City of Tempe haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC Contractor must submit the required certificate of insurance, a plan showing the proposed haul routes and a complete schedule of the hauling operation to the City of Tempe Transportation Division. Prior to submittal, the JOC Contractor should contact Engineering Services for complete details for issuance of the City of Tempe haul permit.

E. ENVIRONMENTAL REQUIREMENTS

The JOC Contractor shall comply with all Federal, State, and Municipal regulations, laws, and policies relating to air, ground water quality, and water conservation. In addition, the following requirements are applicable for City construction projects.

Non-pick up sweepers will not be allowed except as required to make joints during chip sealing operations.

Water flooding of trenches with potable water will not be permitted.

All paints applied by sprayers shall be of a water-based type.

Provisions shall be made to prevent the discharge of construction silt, mud, and debris into City storm drains or streets.

Spills of oil, gas, chemical, or any other hazardous materials must be reported and removed by approved procedures. Mitigation measures shall be taken to prevent contamination of construction storage sites.

Concrete waste must be disposed of in an approved location and at least twenty-five (25) feet from established landscaping.

City of Tempe refuse roll-off containers shall be used on City projects. Please contact Steve Fraijo, Sanitation Supervisor, at 480-350-8268 with any questions.

Hazardous wastes shall not be discharged into the City's sanitary sewers or storm drainage system. All waste products shall be disposed of in accordance with applicable regulations.

The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume in the identified area until approved by the Engineer.

All materials supplied by the JOC Contractor shall be 100% asbestos free unless otherwise approved by the City of Tempe.

No additional payment will be made for compliance with the above items.

In addition to the above, the use of new products made with reclaimed material and meeting project Specifications are encouraged.

F. SAFETY REQUIREMENTS

The JOC Contractor shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements. In addition, the following requirements are applicable for City of Tempe construction projects.

CONTRACT REQUIREMENTS

The JOC Contractor will be required to attend a City safety briefing. The safety briefing session shall address the following issues:

a. City Safety Rules and Expectations.

b. Contractor Tailgates – JOC Contractor shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
c. Accident/Injury/Illness Procedures – The City's Construction Manager and the Risk Management Division shall be contacted any time an accident, injury or illness occurs on the project.
d. Unsafe Acts – Contractor employees shall be empowered to stop an unsafe act or condition at City facilities.
e. Safety Audits – The City reserves the right to conduct safety audits at the job site at any time. In addition, the City shall be notified should an OSHA inspection occur at a City job site.
f. Job and Site Specific Requirements – Site specific requirements such as lockout/tagout rules and evacuation plans shall be covered during the safety briefing as indicated by the project exposures.

The JOC Contractor may have the following additional safety requirements based on the exposures of the project:

The JOC Contractor shall implement a permit-required confined space program as required under federal and state statutes and/or regulations, and amendments thereto, for all work that encompasses a space that 1) is large enough and so configured that an employee can bodily enter and perform assigned work; 2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and 3) is not designed for continuous employee occupancy.

As a part of the JOC Contractor implementing a confined space program, it is the responsibility of the JOC Contractor to provide trained attendant(s) and all intrinsically safe confined space entry related equipment (example: ladders, gas detectors, safety harnesses, safety tripods, and electrical devices) as needed for safe entry of a confined space.

When any City employee is required to enter a confined space during the construction phase of a project, such as for the purpose of inspection, it is the responsibility of the JOC Contractor to provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be a part of the agenda for the weekly construction meetings. Items of discussion will be outstanding safety and health issues, current safety meeting topics, environmental issues and any accidents or injuries on the job. The City reserves the right to request the agendas, minutes of the meetings, and documentation of any safety tailgate meetings held on the job site.

G. TEMPORARY BARRICADES

Temporary barricades shall be regulated in accordance with the City of Phoenix Traffic Control and Barricade Manual, latest edition, with City of Tempe revisions available through the City of Tempe Transportation Division at (480) 350-8219.

No additional payment will be made for temporary barricades. Temporary barricades will be considered subsidiary items to those items for which payment is made.

H. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

The JOC Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until that phase is completed and accepted by the City Engineer.

Estimate or partial payment of work so completed shall not release the JOC Contractor from such responsibility but he shall turn over the entire work in full accordance with these Specifications before final payment can be made.

I. BLUE STAKE

The JOC Contractor is required to notify Blue Stake (602-263-1100) prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21 through 40-360.32, as amended. The JOC Contractor shall directly contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

J. SALT RIVER PROJECT CONSTRUCTION CLEARANCE AGREEMENT

Salt River Project requires all contractors who will be working on its facilities to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. This agreement sets forth the requirements to complete the proposed work in an allotted time frame or to pay full costs for others to complete. It also obligates the contractor to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, the OSHA Permit Required Confined Space rules, as amended. The JOC Contractor is responsible for executing a "Construction Clearance Agreement" with Salt River Project, if required, and furnishing a copy to the City of Tempe prior to proceeding with any construction on Salt River Project facilities.

K. NOTIFICATION OF PROPERTY OWNERS

All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by the JOC Contractor prior to start of construction.

L. ACCESS

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. If only one driveway exists, then access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained during all non-working hours.

M. PROTECTION OF EXISTING FACILITIES

The JOC Contractor is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by the JOC Contractor. The JOC Contractor shall notify the appropriate Utility Company or agency of any construction that may affect its facilities and state the course of action which will be taken to protect same.

N. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT

Any project that disturbs more than one (1) acre is subject to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. Under provisions of that permit, the JOC Contractor shall be designated as permittee, and shall be responsible for providing necessary material and taking appropriate measures to assure that all discharges authorized by the General Permit shall be consistent with the terms and conditions of the General Permit. The AZPDES Construction General Permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from www.adeq.state.az.us/environ/water/permits/links.html or viewed at the City of Tempe Engineering Division.

The JOC Contractor shall complete and submit the following for any Job Order that qualifies for this provision:

1. **Notice of Intent (NOI) for Coverage** under AZPDES Permit No. AZG2003-001 for Construction Activity Discharges to Waters of the United States, including certification of the signature.

2. **Storm Water Pollution Prevention Plan (SWPPP)** for the project.

3. **Notice of Termination (NOT)** of coverage under the AZPDES Construction General Permit.

All subcontractors shall comply with all requirements of the AZPDES Construction General Permit and the project SWPPP. The SWPPP shall be kept on the project site at all times, and shall be retained by the permittee for three (3) years following project completion.

The JOC Contractor shall submit completed and signed NOI forms **PRIOR TO NOTICE TO PROCEED** to the following address: **Stormwater Program – Water Permits Section/ NOI**, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix 5415B-3, Arizona 85007. Copies shall be transmitted to the City's construction project manager at the time of the preconstruction meeting. The JOC Contractor shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the contractor (or any of its appropriate subcontractors) to submit the NOI forms within this time frame (or to promptly make revisions to those forms as requested by the City) which prevents **submittal** of the forms to the Arizona Department of Environmental Quality within the mandated deadline of forty-eight (48) hours prior to start of construction will result in delay of the start of construction. The contractor will not be entitled to any claim for additional compensation for additional costs resulting from such a delay in the construction start date. The NOI shall be posted on the construction site along with the SWPPP.

It is the permittee's responsibility to perform inspections of all storm water pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The contractor is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

All SWPPP reports required under this contract shall be available to the public in accordance with the requirements of the AZPDES Construction General Permit No. AZG2003-001. The JOC Contractor, as the permittee of construction activities with storm water discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality.

No condition of the AZPDES Construction General Permit as well as the SWPPP shall release the contractor from any responsibilities or requirements under other environmental statutes or regulations.

Upon total project completion, acceptance, and de-mobilization, the contractor shall submit its completed, signed Notice of Termination (NOT) form to **Stormwater Program – Water Permits Section/ NOT**, Arizona Department of Environmental Quality, 1110 West Washington 5415B-3, Phoenix, Arizona 85007 with a copy to the City's construction project manager thereby terminating all AZPDES Construction General Permit coverage for the project.

The unit prices for the proposal items shall include all material, labor, and other incidental costs relating to the preparation and submittal of all AZPDES Construction General Permit related forms to Arizona Department of Environmental Quality; preparation, revision and maintenance of the SWPPP; and provision, installation, operation, and maintenance of all pollution control devices. The cost of the activities and items within this provision as provided by the contractor is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include contractor costs in order to assure proper operation of the pollution control devices installed, including all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events or other runoff or releases on the project.

VII. COMMENCEMENT, PROSECUTION AND PROGRESS

A. START OF WORK

Work shall start as soon as practical, and in no case later than seven (7) calendar days after the Notice to Proceed for each Job Order and shall be completed within the agreed upon Job Order Time.

B. CONTRACT COMPLETION DATE

The date established in the Job Order Notice to Proceed is for completion of all or specified portions of the Work. This includes items of Work to be completed under an owner allowance or as part of a contingency item. The stated contract completion date will include weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or a number of calendar days after issuance of the Notice to Proceed.

C. JOC CONTRACTOR'S CONSTRUCTION SCHEDULE

Prior to the start of work, a construction progress schedule shall be required for all projects and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

D. HINDRANCES AND DELAYS

1. Except as provided in Paragraph 2 immediately below, no charge shall be made by the JOC Contractor for hindrances or delays from any cause during the progress of any portion of the work embraced in this contract; but such delays, if due to no fault or neglect of the JOC Contractor, shall entitle the JOC Contractor to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Engineer provided the JOC Contractor gives the Engineer immediate notice in writing of the cause of such delay.

2. The parties agree to negotiate for the recovery of damages related to expenses incurred by the JOC Contractor for a delay under the following circumstances:

    a. If the City is solely responsible for the delay which is unreasonable under the circumstances, and

    b. Which delay was not within the contemplation of the parties to the contract at the time the contract was entered into, and

    c. The JOC Contractor can show the impact of the delay on the critical path of the construction activity as indicated in an approved Construction Progress Management schedule.

3. Unless specifically provided for in the Special Provisions, the maximum compensation for an unreasonable or unforeseen delay shall not exceed the daily amount specified for liquidated damages in MAG Specification 108.9 as based on the original contract amount.

4. This section shall not be construed to void any provisions of this contract, which require notice of delays, which provide for alternative dispute resolution or other procedures for settlement, or which provide for liquidated damages.

E. LIQUIDATED DAMAGES

Unless otherwise specified, liquidated damages will be applied in accordance with the MAG Specification 108.9. Completion of the Work as stated in this Contract is the same as completion of the work as stated in MAG Specification 108.9. Damages will be applied at the amounts specified in Table 108.1.

F. NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract will not be construed as a waiver of such provisions nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each and every provision.

G. JURISDICTION

This contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof.

An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

H. SURVIVAL

All warranties, representations and indemnifications by the JOC Contractor will survive the completion or termination of this Contract.

I. MODIFICATION

No supplement, modification or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract except as expressly provided herein to the contrary.

J. SEVERABILITY

If any provision of this contract or the application thereof to any person or circumstance is held invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

K. INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

L. TIME IS OF THE ESSENCE

Time of each of the terms, covenants and conditions of this Contract is hereby expressly made of the essence.

M. THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the JOC Contractor. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC Contractor and not for the benefit of any other party.

N. COOPERATION AND FURTHER DOCUMENTATION

The JOC Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

O. GUARANTEE AND WARRANTY

The guarantee and warranty period per MAG Specification 108.8 for each individual Job Order starts with the Final Acceptance of the Job Order Work.

VIII. MEASUREMENTS AND PAYMENTS

A. CONTRACT PRICE ADJUSTMENTS

The increase or decrease in Contract Price resulting from a change in the City requested change in Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Job Order or as subsequently agreed to between the parties;

2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and

3. Costs, fees and any other markups.

The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved Job Order.

If an increase or decrease cannot be agreed to as set forth in items 1 through 3, above, and the City issues a Change Order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract. JOC Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to the City or the JOC Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

If the City and the JOC Contractor disagree upon whether the JOC Contractor is entitled to be paid for any services required by the City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, the City and the JOC Contractor shall resolve the disagreement pursuant to MAG Specification 110.

As part of the negotiation process, JOC Contractor shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

If the parties are unable to agree and City expects the JOC Contractor to perform the services in accordance with City's interpretations, JOC Contractor shall proceed to perform the disputed services, conditioned upon City issuing a written order to JOC Contractor (i) directing JOC Contractor to proceed and (ii) specifying City's interpretation of the services that are to be performed.

B. RECORD KEEPING AND FINANCE CONTROLS

Records of the JOC Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC Contractor shall be kept on a generally accepted accounting basis.

The City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit the JOC Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if, upon audit of the JOC Contractor's records, the audit discloses the JOC Contractor has provided false, misleading, or inaccurate cost and pricing data.

The JOC Contractor shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has/have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit it's records to verify the accuracy and appropriateness of pricing data.

C. MISCELLANEOUS REMOVAL AND RELOCATIONS

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the Plans and Specifications, and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, and other comparable items of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, and are included in this category.

D. APPROXIMATE QUANTITIES

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the work under this

Contract; and the JOC Contractor further agrees that the City of Tempe will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the JOC Contractor from the execution and completion of the whole or any part of the work in accordance with the Plans and Specifications herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

E. RETENTION

The Owner has elected to require five percent (5%) retention for each Job Order pursuant to A.R.S. §34-607 (B)(7). This retention requirement may be waived by the Owner.

SECTION 6. SPECIAL PROVISIONS

I. KEY CONTACTS

City of Tempe Engineering (Project Manager)	Larry Fosholt	480-350-2922
City of Tempe Redevelopment/Special Projects	Tim Jones	480-350-8711
City of Tempe Engineering		480-350-8200
Blue Stake		602-263-1100

II. UNIFORMED POLICE OFFICERS

During the course of construction, it may be required to have a uniformed police officer present to facilitate traffic control per the Tempe Barricade Manual and the Traffic Engineer's direction. Uniformed police officers will be paid for by the City.

III. OPEN TRENCHING AND STEEL PLATES

The maximum amount of open trench in any state of trenching or backfilling shall be limited to five hundred feet (500'). All trenches shall be completely backfilled or covered using steel plates at the end of each working day.

The use of steel plates shall not exceed seventy-two (72) hours between completion of work in trench and final patch. Steel plates are to be installed according to Detail T-450 of the Tempe Supplement to the MAG Details. All steel plates installed will be recessed into the existing pavement by milling until the top of the plate is flush with the top of the pavement.

IV. CONFIDENTIALITY OF PLANS AND SPECIFICATIONS

Any Plans or Specifications the JOC Contractor receives regarding this project are for official use only. The JOC Contractor may not share them with others except as required to fulfill the obligations of its contract with the City.

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the JOC Contractor shall include the following language: "Per City of Tempe Guidelines, these Plans are official use only and may not be shared with others except as required to fulfill the obligations of the JOC Contractor's contract with the City of Tempe".

V. IRRIGATION AND LANDSCAPE REPAIR

The Contractor shall repair all sprinkler and irrigation systems that are disturbed in the course of the work. There will be no separate payment for irrigation and landscape repair, the cost of which will be incidental to other bid items. It is highly recommended that the Contractor meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

VI. SEQUENCE OF CONSTRUCTION

The Contractor shall submit a project sequencing schedule to the City Engineer for review at the pre-construction conference. The Contractor is on notice that the City will review the proposed schedule to insure limited community impact.

VII. COORDINATION WITH OTHER CONTRACTORS

Coordination between contractors may be required. Should the JOC Contractor cause damage to the work or property of any separate contractor at the site, or should any claim arising out of or resulting from the JOC Contractor's performance of the work at the site be made by any separate contractor against the JOC Contractor, Design Engineer, or Construction Manager or any other person, JOC Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC Contractor shall, to the fullest extent permitted by Laws and Regulations, defend, indemnify and hold Owner, its officers, officials, employees and volunteers harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of or resulting from any action, legal or equitable, brought by a separate contractor against Owner, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC Contractor's performance of the work.

Should a separate contractor cause damage to the work or property of JOC Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, JOC Contractor shall not institute any action, legal or equitable against Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them on account of such damage or claim.

If JOC Contractor is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and Owner and JOC Contractor are unable to agree as to the extent of any adjustment in Completion Time attributed thereto, JOC

Contractor may make a claim for an extension of time. An extension of the Completion Time shall be JOC Contractor's exclusive remedy with respect to Owner, Design Engineer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them for activities that are its respective responsibilities.

Cooperation between contractors shall be in accordance with MAG Specification 105.7.

VIII. PARTNERING

The foundation and development of a partnering relationship with the JOC Contractor is a goal of the Owner, the Engineer, and the City Construction Manager. This relationship is ideally based on understanding and acceptance of the differing roles and objectives of each party while cooperating on common goals.

Partnering objectives include efficient and effective contract performance, prompt conflict resolution, completion of contract work within budget, on schedule and in accordance with the Plans and Specifications. The guiding principles of the partnering process will be the improvement of working relationships, the improvement of the quality of construction, and improved business practices.

The City will determine if a Partnering workshop is required for a Job Order. If so determined, the Construction Manager will conduct an initial formal partnering workshop with city staff members, the design team, the general contractor and key subcontractors. This will be scheduled between the award of the Contract and the Notice to Proceed with the purpose of establishing a positive atmosphere of cooperation between all the members of the project team.

Role and expectations of all attendees will be discussed and goals agreed upon. This will be reinforced with additional meetings at the 50% and 90% completion stage. General partnering discussions will be part of each weekly meeting.

A fundamental aspect of partnering and a key goal of the development of the partnering relationship is dispute resolution in a timely, professional and non adversarial manner.

In the event that the Owner determines, in its sole discretion, that a dispute cannot be resolved by this partnering process, the City Engineer shall notify the Neutral Evaluator and all disputes shall be resolved pursuant to MAG Specification 110.

Payment for partnering facilities and salary cost of the facilitator shall be paid by the Owner. Owner shall bear other incidental costs related to the preparation and distribution of written materials both in preparation of and forthcoming from partnering sessions. JOC Contractor shall pay the cost of lunch meals for those individuals in attendance at partnering sessions. Salary costs of all JOC Contractor personnel shall be paid by the respective participating JOC Contractor.

Owner shall make all arrangements for the meeting room and facilities necessary to conduct the partnering session and shall select the facilitator.

The JOC Contractor and Owner shall submit to the partnering process set forth herein for any dispute which arises from the interpretation of the Contract Documents or directions given under this Contract within five (5) days of when the dispute is or should have been discovered by either party.

IX. DEMOLITION SERVICES FOR COMMERCIAL AND RESIDENTIAL PROPERTIES

Under clarification issued by the Environmental Protection Agency (EPA) on July 28, 1995, (FR 38725,26) demolition by municipalities of isolated commercial and residential buildings for purposes of nuisance abatement are exempt from National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations. The JOC Contractor shall obtain an 'Earth Moving Permit' from Maricopa County, Environmental Services Department, Air Quality Division (602) 506-6727, for general building demolition and site clearing activities on parcels over 0.10 acre.

The JOC Contractor shall be responsible for the removal of all hazardous and regulated materials from the site of the work.

The following standard specifications shall apply to all demolition work:

Part 1 – General

1.1. Work Included – Furnish all labor, materials, equipment, transportation, technician expertise, record keeping and services necessary for general demolition, hazardous materials removal and disposal, and site clearing such that the property shall be left in safe condition free from nuisance and hazard. "Hazardous materials" means those materials designated by Tempe as requiring special management during transport, storage, treatment, and/or disposal. This includes, but is not limited to: hazardous waste, polychlorinated biphenyls (PCB's); asbestos; and Special Wastes as designated by the State of Arizona. Hazardous waste is clarified as a hazardous material, which meets the established criteria of the Resource Conservation and Recovery Act (RCRA) regulations.

1.2. Quality Assurance – The Tempe Building Code consists of the International Building Code (I.B.C.), 2003 Edition, and the City of Tempe amendments to the 2003 I.B.C. and shall govern the work of this agreement. The JOC Contractor shall obtain a Haul Permit from the City's Public Works Department, a Demolition Permit from the City's Development Services Department, an Air Quality Permit from Maricopa County Health Services Department, and all other applicable permits prior to commencing work. An asbestos NESHAP is required for the work of this contract under the "Residential Building Exemption". The JOC Contractor shall comply with the EPA's revised asbestos NESHAP regulations for all Category I and Category II materials (friable and non-friable asbestos containing materials (ACM)). The JOC Contractor shall treat, transport and dispose of all hazardous materials received pursuant to this contract in an environmentally sound manner and in compliance with all applicable local, state

and federal laws and regulations. The JOC Contractor shall dispose of all hazardous materials at an EPA approved landfill.

1.3. Site Conditions – The City's Water Utilities Department Environmental Division will investigate the site and identify, but not remove, all known hazardous or regulated materials. The JOC Contractor shall remove all hazardous or regulated materials identified by the City and any additional discovered. The JOC Contractor shall not close or obstruct roadways, driveways, sidewalks, or hydrants without proper permits from the City's Public Works Department.

1.4. Scheduling/Sequencing – The JOC Contractor shall coordinate the work with utility companies having facilities on-site. The City will make arrangements for electrical, gas, and water services to be disconnected prior to removal of hazardous or regulated materials. As demolition is normally scheduled to occur as soon as possible after completion of removal operations, the JOC Contractor shall verify satisfactory utility conditions prior to commencing operations, which might jeopardize facilities.

Part 2 – Products

2.1. Materials Salvage – The JOC Contractor is encouraged to salvage and recycle glass, aluminum, copper, etc. as well as any serviceable doors, fixtures, lights, trees, shrubs, etc. Salvageable items are the property of the JOC Contractor and must be removed from the property within the time period of the contract. Historic artifacts such as cornerstones and their contents, commemorative plaques and tablets, as well as other articles of historic significance remain the property of the City. Notify the City if such articles are encountered and obtain direction for appropriate method of removal and disposition.

2.2. Fill Materials – Native or imported fill materials shall conform to the requirements identified below.

Part 3 – Execution

3.1. Inspection – Prior to the start of demolition work, the JOC Contractor shall inspect areas in which work will be performed. Photograph existing conditions of structures and surfaces and surrounding properties, which could be misconstrued as damage resulting from demolition work; file photographs with the City prior to starting demolition.

3.2. Preparation – The JOC Contractor shall notify Blue Stake and coordinate locating of underground facilities. The JOC Contractor shall not carry on any function, work, or operation in closer proximity to any high-voltage overhead power line than is permitted by A.R.S. §40-360.42 et seq. without first notifying the utility owner.

3.3. Demolition – The JOC Contractor shall perform demolition of electrical utilities in accordance with power and telephone company requirements. Disconnect, remove, abandon, and identify designated utilities within demolition areas.

A. Remove foundation walls and footings to a depth of 12 inches below grade.

B. Remove slabs-on-grade. Decision to remove slabs will be made on a project basis.

C. Remove all incidental-landscaping materials, any landscaping in poor condition, or in conflict with general demolition and site clearing

operations. Remove all stumps and dead landscaping elements. Remove all trees of caliper less than six-(6) inches.

D. Remove all demolition materials from site. Remove all debris and demolished landscaping materials from site. Do not burn or bury materials on site.

E. Backfill areas excavated, open pits, holes, and areas where standing water may accumulate. Fill materials required to raise an area shall be placed in six-(6) inch lifts, moistened, and compacted such that the required densities are obtained throughout the lift.

F. Compact soils to 90 percent maximum density in accordance with the American Society for Testing and Materials (ASTM) D698. Granular and imported soils shall be compacted as moisture content of optimum to optimum minus 3 percent. Clay or on site soils shall be compacted at a moisture content of optimum to optimum plus 3 percent.

G. Exposed loose soils shall be scarified, moistened, and compacted to a minimum depth of eight (8) inches. Clay soils shall be compacted only to recommended densities and shall not be over-compacted. Sewer caps shall be installed by the JOC Contractor.

H. The site will be brought to rough grade under this contract. Rough grade and compact areas affected by demolition to maintain site grades and contours. Areas to be rough graded shall extend to the limits of the property.

3.4. Field Quality Control – The JOC Contractor shall provide water and equipment for dust control.

3.5. Protection - Protect existing landscaping materials scheduled to remain. Prevent movement or settlement of adjacent structures. Provide bracing or shoring as necessary. Conduct operations with minimum interference with public or private access. Obtain written permission from adjacent property owners when equipment will traverse, infringe upon, or limit access to their property.

3.6. Schedules - Fill Materials - Native or imported fill materials shall conform to the following requirements:

Graduation (ASTM C136) Percent passing by weight Sieve Size	Imported Fill	Aggregate Base Course
6"	100	---
1-1/2"	---	100
No. 4	---	45-90
No. 200	50 max.	12 max.
Minimum Plasticity Index (ASTM D423 & D424)	10	---
Maximum Expansion Potential [1]	1.5%	---
Max Percent Soluble Sulfates	0.10	0.10

[1]Expansion measured upon remolded sample compacted to 95% of the maximum dry density as determined in accordance with ASTM D698 at a moisture content approximately 2% below optimum.

3.7. Cleaning – The JOC Contractor shall maintain the right-of-way and keep it clean continuously throughout demolition operations. Upon completion of demolition, remove temporary work. Repair adjacent surfaces soiled or damaged by demolition work. Leave project area clean.

3.8. Attachment - Plot plan sketch on 8½ x 11 inch paper for submittal to Maricopa County, Environmental Services Department, Field Services Division, Air Pollution Control as required for Application for Earth Moving Permit, Demolition & Dust Control Plan. An 81/2 x 11 inch plot plan sketch shall also be submitted with the Demolition Permit to the City's Development Services Department.

SECTION 7. FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order to the Contract. **They are included in this Contract only as reference and will also be provided in each Job Order.**

LIST OF SUBCONTRACTORS SB-1

STATUTORY PERFORMANCE BOND B-1

STATUTORY PAYMENT BOND B-3

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS AFF-1

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT REGARDING HEALTH INSURANCE AFF-2

CITY OF TEMPE GUIDELINES FOR IMPLEMENTATION OF HEALTH INSURANCE AFF-3

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor Name	Address	Type of Work	% of Total Contract

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 6704081, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this _____ day of _____, 2008.

_____

PRINCIPAL SEAL

BY:_____

**

_____

SURETY SEAL

BY:_____

_____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto_____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 6704081, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the construction provided for the contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

Witness our hands this _____ day of _____, 2008.

_____

PRINCIPAL SEAL

BY:_____

**

_____

SURETY SEAL

BY:_____

_____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

JOC CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above project.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project against the City of Tempe. The undersigned further agrees to indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2008.

_____
Notary Public

_____
My Commission Expires

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF JOC CONTRACTOR
REGARDING
HEALTH INSURANCE

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of $30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company:_____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBCRIBED AND SWORN to before me this _____ day of _____, 2008.

_____
Notary Public

My commission expires:

_____

City of Tempe
Guidelines for Implementation of Health Insurance

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of $30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of $30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.

2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four (24) hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.

3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.

4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.

5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.

6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.

8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

Glenn Kephart, P.E.
Public Works Manager

SIGNATURE PAGE

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereinabove named, on the date and year first herein written.

CITY OF TEMPE
a Municipal Corporation

_____
MAYOR

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/ City Engineer

APPROVED AS TO FORM:

_____
City Attorney

The Job Order Contractor warrants that the person who is signing this Contract on behalf of the Job Order Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

Job Order Contractor:

_____
Name

_____
Title

City of Tempe Transaction Privilege License (Sales Tax) Permit No.

_____
(Corporate Seal)

Certified to be a true and exact copy

_____
Karen M. Fillmore, Records Specialist

Witness: If Contractor is an Individual

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

For

DEMOLITION
OF
COMMERCIAL AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

ACR CONTRACTING, INC.

CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

Vice Mayor – J. Hut Hutson

Mark Mitchell	P. Ben Arredondo
Barbara J. Carter	Onnie Shekerjian
Shanna Ellis	J. Hut Hutson

City Manager – Charles W. Meyer

City Engineer – Andy Goh, P.E.

2008

TABLE OF CONTENTS

VOLUME 1

Notice to Job Order Contractor N-1

CONTRACT C-1

SECTION 1 - Terms and Definitions C-1

SECTION 2 - Scope of the Work C-7

SECTION 3 - Contract Price and Job Order Price C-8

I. Contract Price C-8
II. Job Order Price C-8

SECTION 4 - Time of Completion C-8

I. Contract Time C-8
II. Job Order Time C-10

SECTION 5 - General Provisions C-10

I. JOC Contractor Requirements and Conditions C-10
II. Award and Execution of Contract C-11
III. Job Order Scope of Work C-14
IV. Control of Work C-16
V. Control of Materials C-20
VI. Legal Regulations and Responsibilities to Public C-20
VII. Commencement, Prosecution and Progress C-27
VIII. Measurement and Payments C-29

SECTION 6 - Special Provisions C-32

I. Key Contacts C-32
II. Uniformed Police Officers C-32
III. Open Trenching and Steel Plates C-32
IV. Confidentiality of Plans and Specifications C-32
V. Irrigation and Landscape Repair C-33
VI. Sequence of Construction C-33
VII. Coordination with Other Contractors C-33
VIII. Partnering C-34
IX. Demolition Services for Commercial and Residential Properties ... C-35

Table of contents continued

SECTION 7 – Forms C-36

Subcontractor List SB-1

Performance Bond B-1

Payment Bond B-3

JOC Contractor's Affidavit (Settlement of Claims) AFF-1

JOC Contractor's Affidavit (Health Insurance) AFF-2

SIGNATURE PAGE S-1

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

NOTICE TO JOB ORDER CONTRACTOR

Each Job Order Proposal by the Job Order Contractor shall be submitted to the City of Tempe, Arizona, Public Works Department, Engineering Office, City Hall West Garden Level, 31 East 5th Street, Tempe, Arizona 85281. All correspondence for the Job Order shall reference an assigned City of Tempe project title and project number.

The proposed work for each Job Order will be determined in accordance with the provisions of this Contract and shall be accomplished in accordance with the "Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction", and "The City of Tempe Supplements thereto" except as otherwise set forth in the Contract Documents.

The JOC Contractor is required to submit, from its insurance carriers, a three (3) year history of both its Experience Modification Factor (EMOD) and its loss ratio. In addition, all Contractors are required to submit an affidavit certifying that its company and all of its subcontractors, defined as doing work in excess of $30,000.00 as determined at the start of each project, will have and will continue to have during the course of the contract health insurance in force for all employees. The employer must offer insurance to employees for its eligible dependents.

Work shall not start until after the date of issuance of a Job Order Notice to Proceed and shall be completed within the number of calendar days shown in the Job Order.

The City of Tempe reserves the right to reject the JOC Contractor's Proposal.

Please direct any questions to the City of Tempe Engineering Division at (480) 350-8200.

Andy Goh, P.E.
Deputy PW Manager/City Engineer

12/20/07
Date

CONTRACT

THIS CONTRACT is made and entered into this 10th day of January, 2008, by and between the City of Tempe, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona hereinafter designated the "City", and ACR Contracting, Inc., of the City of Chandler, County of Maricopa, and State of Arizona, hereinafter designated as the "JOC CONTRACTOR."

The City intends to have a number of Projects which will be constructed as Job Orders.

To undertake the construction administration of said Project, the City will utilize a "Construction Manager Professional". The name of the Construction Manager Professional will be provided at the preconstruction meeting for each Job Order.

The JOC Contractor has represented to the City the ability to provide or procure construction and design services. Based upon this representation, the City engages the JOC Contractor to provide these services.

All work done under this contract shall be accomplished in accordance with the "MAG Specifications" except as may be modified in the Contract Documents. In the event of any conflict between these Contract Documents and the requirements of the MAG Specifications, these Contract Documents shall prevail.

The JOC Contractor, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees, for itself, its heirs, administrators, successors, and assigns as follows:

SECTION 1. TERMS AND DEFINITIONS

In the event of any conflict between the terms and definitions set out below and the terms and definitions found in the "MAG Specifications", the terms and definitions set out below shall prevail in interpreting these Contract Documents unless the context requires otherwise.

Addendum – A written modification of the Contract Documents after the Contract Documents have been issued by the City Engineer but ten (10) days prior to City Council Award of this Contract. This definition replaces the MAG Specification definition of Addendum.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while delivering a quality and functional Project that meets City requirements.

Amendment – A written modification of the terms of this Construction Services Contract.

Award – The formal action of the City Council to accept this Contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

City – The City of Tempe, a public body or authority and municipal corporation, with whom the JOC Contractor has entered into this Contract and for whom the services are to be provided pursuant to this Contract. The City is the Agency or Owner or Contracting Agency for purposes of this contract. This definition replaces the MAG Specification definition of City.

City's Contingency – A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the City's contingency will be set solely by the City and will be in addition to the project costs included in the JOC Contractor's Job Orders.

Construction Fee – The JOC Contractor's administrative costs, home office overhead, and profit, whether at the JOC Contractor's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are included in the General Conditions of the construction phase.

Construction Manager Professional – The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth in this Contract and in the Construction Manager Professional's Contract with the City.

Contract – This written document, including its exhibits and attachments signed by the City and JOC Contractor covering the Job Order Construction Services and including other documents (the "Contract Documents") itemized and referenced in or attached to and made part of this Contract. This definition replaces the MAG Specification definition of Contract.

Contract Documents – This Contract, exhibits, attachments, "General Provisions", "Special Provisions", "Technical Specifications", "Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction" as amended by the City of Tempe, "Plans", "Performance Bonds", "Payment Bonds", all Written Amendments, Addendums and Change Orders to this Contract and any other documents so designated in this Contract. This definition replaces the MAG Specification of Contract Documents.

In case of a discrepancy or conflict, the order in which the Contract Documents govern is as follows from the highest to lowest: Special Provisions, Technical Specifications, Plans, General Provisions, Tempe Supplement to the M.A.G. Specifications, Tempe Supplement to the M.A.G. Details, M.A.G. Standard Specifications and Standard Details.

Contract Price - means the amount or amounts set forth in this Contract subject to Contract Amendments in accordance with this Contract.

Contract Services - means the services required by the Contract Documents.

Contract Time - means the time set forth in this Contract.

Cost of the Work – The direct costs necessarily incurred by the JOC Contractor in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the JOC Contractor's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Cost Model – A breakdown of the scope of the Project that is initially developed by the JOC Contractor during the conceptual design phase and based on information from the Project Team and the JOC Contractor's records of similar projects. The model will evolve as the design progresses and be maintained by the JOC Contractor throughout the design phase and will include any assumptions and clarifications made by the JOC Contractor. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team.

Day(s) – Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the JOC Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC Contractor during the design phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule of Values, Alternative System Evaluations, Procurement Strategies and Plans, Cost Estimates, Construction Market Surveys, Cash Flow Projections, GMP Proposals, Subcontractor Procurement Plan, Subcontractor Contracts, Subcontractor Bid Packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

Design Engineer – The person, firm or corporation having a contract with the City to furnish design services for this project.

Design Engineer's Consultant – A person, firm, or corporation having a contract with the Design Engineer to furnish services required of the Design Engineer, as the Design Engineer's independent professional associate or consultant with respect to the Project.

Design Professional - A qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order.

Differing Site Conditions - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

Duration of the Work - The number of Days from a Job Order Notice To Proceed to Substantial Completion.

Effective Date of this Contract – The date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the two parties signs this Contract.

Engineer – The City Engineer acting directly or through his duly authorized representative. This definition replaces the MAG Specification definition for Engineer.

Final Acceptance – The completion of a Job Order as prescribed in each Job Order.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the JOC Contractor during the construction phase: payroll costs for the project manager or construction manager (but not both) for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of consultants not in the direct employ of the JOC Contractor or subcontractors; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

JOC Contractor – Firm selected by the City to provide or procure construction and design services as detailed in this Contract.

JOC Contractor's Representative - The person described in each Job Order.

JOC Contractor's Senior Representative - The person described in each Job Order.

Job Order - A specific written contract between the Owner and the JOC Contractor for a Job Order including a scope, a Job Order Price, a Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and the Job Order Contractor's proposal either by reference or inclusion.

Job Order Price - The sum of the maximum cost of the Work for a Job Order, including, but not limited to, the construction price of the JOC Contractor(s); the construction price of the subcontractor(s); the price of the subconsultant(s); Labor; Overhead and Profit; general conditions fee; taxes, bonds, insurances costs; and the JOC Contractor's contingency as proposed and approved pursuant to this Contract. The approved Job Order Price will be made part of this Contract by executing a Job Order.

JOC Payment Request - The City form used by the JOC Contractor to request progress payments for Job Orders in accordance with this Contract.

Job Order Time - The time from the Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing a Job Order.

Laws and Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Legal Requirements - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"MAG Specifications" – Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction, latest edition, and the City of Tempe Supplement thereto.

Notice of Award – The written notice by the City to the JOC Contractor stating that upon compliance by the JOC Contractor with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver this Contract. This definition replaces the MAG Specification definition for Notice of Award.

Notice to Proceed – A written notice given by City to the JOC Contractor fixing the date on which the JOC Contractor will start to perform the JOC Contractor's obligations under this Contract. This definition replaces the MAG Specification definition for Notice to Proceed.

Plans – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the JOC Contractor during the construction phase and which have been prepared or approved by the Design Engineer and the City.

This definition includes Plans that have reached a sufficient stage of completion and have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g., conceptual design Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but "NOT FOR CONSTRUCTION"). Shop drawings are not Plans as so defined. This definition replaces the MAG Specification definition for Plans.

Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC Contractor to illustrate materials or equipment for some portion of the Work.

Project – The total design and construction of which the design services and construction Work to be provided may be the whole or a part of a Job Order. This definition replaces the MAG Specification definition for Project.

Project Team – Construction services team consisting of the Design Professional, JOC Contractor, the City (Water Utilities Department representatives, Design Project Manager, Construction Project Manager), and Construction Manager Professional and other stakeholders who are responsible for making decisions regarding the Project. The other stakeholders will be identified in the preconstruction conference.

Record Documents – The documents created pursuant to this Contract.

Samples – Physical examples of materials, equipment or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC Contractor and submitted by the JOC Contractor to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

Site – The land or premises on which a Job Order is located.

Specifications – The part(s) of the Contract Documents labeled as Technical Specifications for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. This definition replaces the MAG Specification definition for Specifications.

Subcontractor or Subconsultant – An individual, firm, entity or corporation having a direct contract with the JOC Contractor who undertakes to perform a part of the design phase services or construction phase Work at the site for which the JOC Contractor is responsible. This definition replaces the MAG Specification definition for Subcontractor.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City, at the City's discretion, can occupy and use the Project or a portion thereof for its intended purposes.

Partial acceptance of buildings shall include, as a minimum, (a) approval by City Fire Marshall and local authorities including issuance of the Certificate of Occupancy (b) all systems in place, functional, and displayed to the City or it's representative; (c) all materials and equipment installed; (d) all systems reviewed and accepted by the City; and (e) Heating, Ventilation and Air Conditioning test and balance completed at least 30 days prior to projected substantial completion.

For buildings and other projects, partial acceptance may also include (a) elevator permit; (b) draft Operation and Maintenance manuals and record documents reviewed and accepted by the City; (c) City operation and maintenance training completed; (d) landscaping and site work; and (e) final cleaning.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by JOC Contractor or any Subcontractor.

Total Float – Number of calendar days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work – Any or all of the improvements as required by the Contract Documents, and the construction, demolition, reconstruction, and repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto. This definition replaces the MAG Specification definition for Work.

SECTION 2. SCOPE OF THE WORK

The JOC Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work specified in the Job Order for which it is issued a Job Order Notice to Proceed in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for a specific Job Order in accordance with the Job Order.

The JOC Contractor shall construct the same and install the material therein for the Owner in a good and workmanlike and substantial manner and to the satisfaction of the Owner or his properly authorized agents and strictly pursuant to and in conformity with the Contract Documents and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

Minor design services may be required for some Job Orders. For those Job Orders that may require design services the Contractor shall seek the services of an Arizona registered professional to prepare plans for permitting.

The Design Professional shall maintain at least $1,000,000 Professional Liability Coverage.

All documents prepared by the Design Professional are subject to review by the City. Review by the City does not relieve any Design Professional from the professional liability associated with the documents they have prepared.

The JOC Contractor's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Contract Services. A JOC Contractor's Representative will be assigned for each Job Order. The JOC Contractor's Representative shall communicate regularly with the City and shall be vested with the authority to act on behalf of the JOC Contractor.

SECTION 3. CONTRACT PRICE AND JOB ORDER PRICE

I. CONTRACT PRICE

This Contract will have a maximum amount of $1,000,000.

II. JOB ORDER PRICE

The City intends that each Job Order performed under this Contract will average $6,000 to $8,000 in construction costs, but in no event will any Job Order exceed $1,000,000.

Each Job Order price is subject to adjustments made in accordance with this Contract.

Unless otherwise provided in the Contract Documents, each Job Order price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

The Job Order Price shall use the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor	$ _____
Allowances	$ _____
Subtotal	**$** _____
Overhead and Profit (per Table 1)	$ _____
Total	**$** _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Job Order Price Total *	**$** _____

Table 1 shows the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the Contractor's Contingency is the value used in the matrix of Table 1 for determining the overhead and profit multiplier to apply to a Job Order.

Table 1
(Job Order Price versus Overhead and Profit Multiplier)

Job Order Price *	$0 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 to $499,999	$500,000+
Overhead and Profit Multiplier	14	13	12	11	10

* The combined total of the Job Order Price is used in Table 1 for determining the Overhead and Profit Multiplier.

The agreed upon insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

Insurance Percentage:	2.35%	
Bonds (Performance and Payment)	2.5%	($100,000 or less)
	1.5%	(more than $100,000)
Sales Tax Percentage	5.27%	

The JOC Contractor guarantees to bring each Job Order within the Job Order Price or JOC Contractor alone will be required to pay the difference between the actual cost and the Job Order Price.

The scope of work will vary with each Job Order. At the beginning of each Job Order, a scope conference will be scheduled to define design and construction services required of the JOC Contractor. The Job Order and related documents will be given to the JOC Contractor.

The JOC Contractor will be asked to provide a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order based on the scope meeting and the provided documents.

The City will review the submitted proposal. The City and JOC Contractor shall negotiate in good faith and, as expeditiously as possible, agree upon the Job Order Price and the Duration of the Work. Upon reaching concurrence, the parties shall execute the Job Order reflecting the terms of the Job Order.

SECTION 4. TIME OF COMPLETION

The JOC Contractor further covenants and agrees at its own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation for performing all of the work for the construction of each Job Order agreed to pursuant to this Contract and to construct the same and install the material therein, as called for by this Contract and each Job Order free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in each Job Order Notice to Proceed.

I. CONTRACT TIME

Contract Time shall commence on the Notice to Proceed date for this Contract. This Contract shall be in effect for a twelve (12) month period, or until $1,000,000 has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew for twelve (12) months or the balance of the maximum contract amount or as otherwise specified. In any event, the maximum duration of this Contract is three (3) years from its commencement date.

The option to renew will be exercised by the City or the option to renew will not be exercised by the City based on the JOC Contractor's successful performance and the needs of the City as determined by the City in its sole discretion.

The Contract will remain in full force and effect during the performance of any Job Order.

II. JOB ORDER TIME

Job Orders may be issued at any time during the duration of this Contract.

Each Job Order will include a Job Order Notice to Proceed date, Duration of the Work as determined pursuant to each Job Order and a calculated Substantial Completion date.

JOC Contractor agrees that it will commence performance of the Work and achieve the Job Order Time.

Each Job Order Time shall be subject to adjustment in accordance with this Contract.

SECTION 5. GENERAL PROVISIONS

I. JOC CONTRACTOR REQUIREMENTS AND CONDITIONS

A. LICENSES

Prior to execution of this contract, the JOC Contractor must possess a valid City of Tempe Transaction Privilege License and shall provide the Permit Number of such for validation and must carry the appropriate State of Arizona Contractor License.

The Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed work at the time of the Job Order Proposal. If the subcontractor does not have the appropriate license, the City reserves the right to reject the Proposal.

B. EXAMINATION OF PREMISES

The JOC Contractor shall visit the site of each Job Order and shall fully acquaint itself with the conditions as they exist, so that it may fully understand the facility, difficulties and restrictions attending the execution of the work.

Subcontractors shall also thoroughly examine and be familiar with the Specifications and other Contract Documents. The failure of the JOC Contractor to obtain, receive or examine any addenda to the proposed Contract Documents, or to visit the site and acquaint itself with the conditions there existing, shall not relieve it from any obligation with respect to its Job Order Proposal.

By submitting a Job Order Proposal, the JOC Contractor agrees that it has examined the site, Specifications and other Contract Documents and accepts, without recourse, all site conditions and the proposed Contract Documents.

C. GOVERNMENT APPROVALS AND PERMITS

Unless otherwise provided, JOC Contractor shall obtain or assist the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The JOC Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

The City shall be responsible for City of Tempe review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City shall also pay for utility design fees for permanent services.

JOC Contractor shall be responsible for all other permits and review fees not specifically listed in this Contract.

JOC Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the JOC Contractor's responsibility.

II. AWARD AND EXECUTION OF CONTRACT

A. EXECUTION OF CONTRACT

The form of the contract, which the JOC Contractor will be required to execute and the form of bonds which it will be required to furnish for each Job Order, are included in the Contract Documents and should be carefully examined by the JOC Contractor. The JOC Contractor will be required to execute the standard form of Contract in one (1) original counterpart within ten (10) calendar days after formal Notice of Award of Contract. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within 10 (ten) calendar days after the date of Notice of Award shall be just cause for the cancellation of the Award.

B. JOC CONTRACTOR INSURANCE AND BOND RATING REQUIREMENTS

Personal or individual bonds are not acceptable.

Bonding companies and Liability and Excess insurance carriers shall be "Best Rated A-VII" or better as currently listed in the most recent "Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company. This requirement does not apply to the Worker's Compensation/Employers Liability portion on the Certificate of Insurance.

Each such bond SHALL be executed by a surety company or companies duly licensed to do business in the State of Arizona. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

C. INSURANCE REQUIREMENTS

The JOC Contractor's attention is directed to Contractor's Insurance, MAG Specification 103.6. The insurance policies required by MAG Specification 103.6 shall additionally provide full coverage of indemnity to the City, including an increase in the minimum limits to $5,000,000 combined single limit coverage for General Liability. Prior to execution of the contract, the JOC Contractor shall furnish the City with a Certificate of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify the Project Number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination. The Cancellation Clause shall not include the phrases "endeavor to" or "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." When the project includes construction of a new building addition to an existing building, Builders Risk Insurance shall be provided for the full amount of the contract, in accordance with MAG Specification 103.6C.

D. HEALTH INSURANCE REQUIREMENTS

All JOC Contractors who enter into a contract in excess of $30,000.00 with the City of Tempe must certify that they have, and all of its major subcontractors will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-2). Major subcontractors are defined as entities doing work in excess of $30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all contractor and major subcontractor employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the contract.

All Contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at it's office and at the job site. Signs for posting will be provided by the City at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

E. BONDS REQUIRED

Prior to execution of each individual Job Order, the JOC Contractor shall provide a performance bond and a payment bond, each in an amount equal to the full amount of the agreed upon Price for that Job Order.

These bonds shall meet the requirements of Arizona Revised Statutes Title 34, Chapter 6, as amended:

1. Performance bond, one hundred percent (100%) of the Job Order Price.
2. Payment bond, one hundred percent (100%) of the Job Order Price.

F. INDEMNIFICATION

To the fullest extent permitted by law, the JOC Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the JOC Contractor, its agents, employees, or any tier of JOC Contractor's subcontractors in the performance of this Contract.

JOC Contractor's duty to defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by JOC Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the JOC Contractor, any tier of JOC Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the JOC Contractor may be legally liable.

The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

III. JOB ORDER SCOPE OF WORK

A. DESCRIPTION OF WORK

The proposed work will be defined by each Job Order. Job Orders shall be in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with Job Order Contractor's name;
b. Job Order number and date;
c. The agreed Work and applicable technical specifications and drawings;
d. The agreed period of performance and, if required by Owner, a work schedule;
e. The place of performance;
f. The agreed total price for the Work to be performed;
g. Submittal requirements;
h. Owner's authorized representative who will accept the completed Work;
i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
j. Such other information as may be necessary to perform the Work.

B. PRE-CONSTRUCTION CONFERENCE

After completion of Job Order prior to the commencement of any Work on any Job Order, a pre-construction conference will be scheduled.

The purpose of this conference is to establish a working relationship between the JOC Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

Minimum attendance by the JOC Contractor shall be a responsible company/ corporate official who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the JOC Contractor's safety officer.

The Job Order Notice to Proceed date will be established.

C. TRAFFIC CONTROL

All traffic shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions, available through the City of Tempe Transportation Division (Transportation) at 480-350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

At the time of the pre-construction conference, the JOC Contractor shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

The JOC Contractor shall have the full responsibility and liability for traffic control for this project. The JOC Contractor shall submit a Traffic Control Plan to Transportation for approval one week prior to beginning work under this contract. It shall be noted that Traffic under this contract shall include all motor vehicles, bicyclists, and pedestrians.

During construction it may be necessary to alter traffic control as approved by Transportation. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the ADOT Traffic Control Manual; or the City of Phoenix Barricade Manual, latest edition, with revisions as adopted by the City of Tempe. The most restrictive manual shall apply. No measurement will be made for traffic control. No payment will be made for traffic control. The cost thereof shall be included in the price bid for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any revisions shall be submitted to Transportation for review and approval.

In the event the JOC Contractor damages any traffic signal equipment, traffic signal conduit, and/or circuits, it shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to the JOC Contractor at twice the City's cost.

The JOC Contractor shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Transportation.

Speed limits shall be strictly enforced.

For more information, please contact the City of Tempe Transportation Division at (480) 350-8219.

D. CLEAN-UP

The JOC Contractor shall, upon completion of the Work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

E. ALTERATION OF WORK

In the event that significant changes in the scope of the work, and/or changes in the quantities due to contingencies of construction becomes necessary, such changes shall be made in accordance with Section 104.2 of General Conditions in the MAG Specifications.

The costs associated with any extra work as authorized by the contracting agency must be approved prior to the start of work. Extra work performed on an actual cost basis shall be submitted for approval within twenty-one (21) days after the completion of such work. The final costs for additional work shall also include any and all charges associated with extended general conditions or contract acceleration.

F. SUBSIDIARY WORK

All work called for in the Plans and Specifications shall be performed by the JOC Contractor and unless a specific bid item is provided for the work, then such portion of the work will be considered subsidiary to other work for which payment is provided.

IV. CONTROL OF WORK

A. INTERPRETATIONS OF DRAWING AND DOCUMENTS

If any JOC Contractor submitting a Job Order Proposal for the proposed Work or any part thereof is in doubt as to the true meaning of part of the Contract Documents, or finds discrepancies in or omissions from the Contract Documents, such JOC Contractor may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC Contractor submitting the request will be responsible for its prompt delivery. Any interpretations or corrections of the proposed documents will be made by Addendum duly issued, and a copy of each addendum will be mailed or delivered to the JOC Contractor who shall distribute the addendum to the appropriate Subcontractor(s). The City of Tempe will not be responsible for any other explanation or interpretations of the documents.

B. JOC CONTRACTOR'S REPRESENTATIVE

The JOC Contractor shall at all times be present at the work in person or represented by a foreman or other properly designated agent. Instructions and information given by the Engineer to the JOC Contractor's foreman or agent on the Work shall be considered as having been given to the JOC Contractor.

C. RELOCATION OF UTILITIES

All utilities in conflict with the new Work will be relocated by the City except as otherwise provided in the Plans and Specifications,

D. SUPERVISION BY JOC CONTRACTOR

The JOC Contractor will supervise and direct the work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the JOC Contractor as the JOC Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the JOC Contractor and all communications given to the supervisor shall be as binding as if given to the JOC Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

Nothing contained in this Contract shall be construed as establishing an employer/employee relationship, partnership or joint venture between the JOC Contractor and the City.

E. CONSTRUCTION STAKING

Construction staking will be provided by the JOC Contractor. Replacement of construction stakes that have been knocked out due to JOC Contractor's work or lack of work, weather conditions, traffic, or vandalism will be at the JOC Contractor's expense.

F. SURVEY CONTROL POINTS

Existing survey monuments shall be protected by the JOC Contractor or removed and replaced under the direct supervision of the City Surveyor or the City Surveyor's authorized representatives.

Prior to construction, it is the responsibility of the JOC Contractor to notify the City Surveyor of any survey monuments which need to be referenced off of the monument. Any monuments which are lost and have not been referenced off due to the JOC Contractor's negligence and/or lack of notification to the City Surveyor shall be replaced at the JOC Contractor's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

G. AUTHORITY OF THE CONSTRUCTION MANAGER PROFESSIONAL

The Construction Manager Professional shall act as the City Engineer's designated representative during the construction period. Construction Manager Professional shall advise on questions concerning coordination with the City of

Tempe, public safety, and quality and acceptability of materials and work performed. The Construction Manager Professional or the Construction Manager Professional's assigned inspector shall interpret the intent of the Contract Documents in an unbiased manner.

The Construction Manager Professional or Construction Manager Professional's assigned inspector shall be present on the site at times during construction to monitor the work and to maintain records for contract management. The Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract Documents so as to minimize delays in construction. The Construction Manager Professional will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

H. SHOP DRAWINGS, SCHEDULES & SAMPLES

In time for each to serve its proper purpose and function, the JOC Contractor shall submit to the Engineer such schedules, reports, drawings, lists, literature samples, instruction, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

Shop drawings and data shall be submitted to the Engineer in such number of copies as will allow him to retain four (4) copies of each submittal.

The submittal shall clearly indicate the specific area of the Contract Documents for which the submittal is made. The additional copies received by him will be returned to the JOC Contractor's representative at the job site. The Engineer's notations of the action which he has taken will be noted on one (1) of these returned copies.

The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the jobsite Contract Documents, and the fabrications furnished shall be in conformance with the same.

However, the Engineer's review of the above drawings, lists, prints, specifications, samples, or other data shall not release the JOC Contractor from its responsibility for the proper fulfillment of the requirements of this Contract nor for fulfilling the purpose of the installation nor from its liability to replace the same, should it prove defective or fail to meet the specified requirements.

I. AS-BUILT PLANS

The JOC Contractor shall provide and maintain accurate field data on a red-lined set of contract Plans, which are to be kept current and submitted as complete at the conclusion of the construction. These record Plans will be used as documentation for progress payments, and upon project completion, for the preparation of 'as-built' file Plans by the architect/engineer. All 'as-built' information shall be on 3 ml double

matte black line mylar and shall be 24" x 36" in size. Final payment will not be issued until all record Plans and as-built information are submitted by the JOC Contractor, and certified to be complete by the architect/engineer of record.

J. UNDERGROUND UTILITIES

Underground utilities indicated on the Plans are in accordance with maps furnished by the City of Tempe and by each utility company. The locations are only approximate and require verification prior to construction as mandated by City of Tempe requirements for underground street crossings and potholing.

K. INSPECTION

The JOC Contractor is responsible for complying with the Specifications and is hereby forewarned that final approval of any work will not be given until the entire project is completed and accepted. Prior to "final inspection" on any City facilities requiring a Building Permit, the JOC Contractor must call for final inspections from the Development Services and Public Works Departments of the City of Tempe. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

L. SUBSTANTIAL COMPLETION

Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC Contractor all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in a certificate of Substantial Completion.

M. BENEFICIAL OCCUPANCY

"Beneficial occupancy" is use of a facility or project, in whole or in part, by the owner for its intended purpose. This may occur even though some work of the contract remains undone.

Prior to such use or occupancy, the owner will prepare a written contract with the JOC Contractor and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

N. COMPLETION OF THE WORK

Completion of the Work is full completion of all construction associated with a contract, including, but not limited to punch list items, close out documentation, Operation and Maintenance manuals, warranties, and record Plans as certified by the Architect or Engineer of record. The JOC Contractor may be found in default of contract in accordance with MAG Specification 108.10, should project completion fall behind substantial completion by more than forty-five (45) days.

O. FINAL ACCEPTANCE & GUARANTEE

"Final Acceptance" shall mean a written final acceptance of the Work. The City Engineer shall make the final acceptance promptly after the work has been completed in accordance with the Contract Documents and after inspection is made. The work performed under this contract shall be guaranteed for a period of one year from the date of final acceptance.

V. CONTROL OF MATERIALS

A. EXCESS MATERIALS

Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC Contractor. The JOC Contractor shall, prior to commencement of the work, submit a letter to the City Engineer stating the location of disposal site(s) for all excess material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

B. QUALITY CONTROL

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Contract Documents; and it shall be the duty of the JOC Contractor to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the work.

The Engineer may, by appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon the JOC Contractor as though contained in the original Contract Documents.

At the option of the Engineer, materials to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the work. The JOC Contractor shall give the Engineer written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the work.

VI. LEGAL REGULATIONS AND RESPONSIBILITIES TO PUBLIC

A. CONFLICT OF INTEREST

This contract is subject to cancellation under the provisions of ARS §38-511.

B. EMERGENCIES

In any emergency affecting the safety of persons and/or property, JOC Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The MAG Specification 107.5 applies to this provision.

C. NON-DISCRIMINATION

In connection with the performance of work under this Contract, the JOC Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or disability. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The JOC Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of the Non-Discrimination clause.

D. HAUL PERMIT

In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, the JOC Contractor will obtain a Maricopa County Earth Moving Permit as required under Rule 200 of the Maricopa County Division of Air Pollution Control Requirements. This permit will require that a Control Plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. The Control Plan should be submitted to the City of Tempe for review prior to County submittal to ensure that all elements of the planned operation are covered. Please contact the Maricopa County Division of Air Pollution Control at 602-506-6700 for additional details.

In addition, all Contractors hauling fill or excavation materials, where the haul exceeds five thousand (5,000) cubic yards or when the duration of the haul is more than ten (10) working days, are required to obtain a City of Tempe haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC Contractor must submit the required certificate of insurance, a plan showing the proposed haul routes and a complete schedule of the hauling operation to the City of Tempe Transportation Division. Prior to submittal, the JOC Contractor should contact Engineering Services for complete details for issuance of the City of Tempe haul permit.

E. ENVIRONMENTAL REQUIREMENTS

The JOC Contractor shall comply with all Federal, State, and Municipal regulations, laws, and policies relating to air, ground water quality, and water conservation. In addition, the following requirements are applicable for City construction projects.

Non-pick up sweepers will not be allowed except as required to make joints during chip sealing operations.

Water flooding of trenches with potable water will not be permitted.

All paints applied by sprayers shall be of a water-based type.

Provisions shall be made to prevent the discharge of construction silt, mud, and debris into City storm drains or streets.

Spills of oil, gas, chemical, or any other hazardous materials must be reported and removed by approved procedures. Mitigation measures shall be taken to prevent contamination of construction storage sites.

Concrete waste must be disposed of in an approved location and at least twenty-five (25) feet from established landscaping.

City of Tempe refuse roll-off containers shall be used on City projects. Please contact Steve Fraijo, Sanitation Supervisor, at 480-350-8268 with any questions.

Hazardous wastes shall not be discharged into the City's sanitary sewers or storm drainage system. All waste products shall be disposed of in accordance with applicable regulations.

The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume in the identified area until approved by the Engineer.

All materials supplied by the JOC Contractor shall be 100% asbestos free unless otherwise approved by the City of Tempe.

No additional payment will be made for compliance with the above items.

In addition to the above, the use of new products made with reclaimed material and meeting project Specifications are encouraged.

F. SAFETY REQUIREMENTS

The JOC Contractor shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements. In addition, the following requirements are applicable for City of Tempe construction projects.

CONTRACT REQUIREMENTS

The JOC Contractor will be required to attend a City safety briefing. The safety briefing session shall address the following issues:

a. City Safety Rules and Expectations.

b. Contractor Tailgates – JOC Contractor shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
c. Accident/Injury/Illness Procedures – The City's Construction Manager and the Risk Management Division shall be contacted any time an accident, injury or illness occurs on the project.
d. Unsafe Acts – Contractor employees shall be empowered to stop an unsafe act or condition at City facilities.
e. Safety Audits – The City reserves the right to conduct safety audits at the job site at any time. In addition, the City shall be notified should an OSHA inspection occur at a City job site.
f. Job and Site Specific Requirements – Site specific requirements such as lockout/tagout rules and evacuation plans shall be covered during the safety briefing as indicated by the project exposures.

The JOC Contractor may have the following additional safety requirements based on the exposures of the project:

The JOC Contractor shall implement a permit-required confined space program as required under federal and state statutes and/or regulations, and amendments thereto, for all work that encompasses a space that 1) is large enough and so configured that an employee can bodily enter and perform assigned work; 2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and 3) is not designed for continuous employee occupancy.

As a part of the JOC Contractor implementing a confined space program, it is the responsibility of the JOC Contractor to provide trained attendant(s) and all intrinsically safe confined space entry related equipment (example: ladders, gas detectors, safety harnesses, safety tripods, and electrical devices) as needed for safe entry of a confined space.

When any City employee is required to enter a confined space during the construction phase of a project, such as for the purpose of inspection, it is the responsibility of the JOC Contractor to provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be a part of the agenda for the weekly construction meetings. Items of discussion will be outstanding safety and health issues, current safety meeting topics, environmental issues and any accidents or injuries on the job. The City reserves the right to request the agendas, minutes of the meetings, and documentation of any safety tailgate meetings held on the job site.

G. TEMPORARY BARRICADES

Temporary barricades shall be regulated in accordance with the City of Phoenix Traffic Control and Barricade Manual, latest edition, with City of Tempe revisions available through the City of Tempe Transportation Division at (480) 350-8219.

No additional payment will be made for temporary barricades. Temporary barricades will be considered subsidiary items to those items for which payment is made.

H. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

The JOC Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until that phase is completed and accepted by the City Engineer.

Estimate or partial payment of work so completed shall not release the JOC Contractor from such responsibility but he shall turn over the entire work in full accordance with these Specifications before final payment can be made.

I. BLUE STAKE

The JOC Contractor is required to notify Blue Stake (602-263-1100) prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21 through 40-360.32, as amended. The JOC Contractor shall directly contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

J. SALT RIVER PROJECT CONSTRUCTION CLEARANCE AGREEMENT

Salt River Project requires all contractors who will be working on its facilities to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. This agreement sets forth the requirements to complete the proposed work in an allotted time frame or to pay full costs for others to complete. It also obligates the contractor to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, the OSHA Permit Required Confined Space rules, as amended. The JOC Contractor is responsible for executing a "Construction Clearance Agreement" with Salt River Project, if required, and furnishing a copy to the City of Tempe prior to proceeding with any construction on Salt River Project facilities.

K. NOTIFICATION OF PROPERTY OWNERS

All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by the JOC Contractor prior to start of construction.

L. ACCESS

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. If only one driveway exists, then access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained during all non-working hours.

M. PROTECTION OF EXISTING FACILITIES

The JOC Contractor is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by the JOC Contractor. The JOC Contractor shall notify the appropriate Utility Company or agency of any construction that may affect its facilities and state the course of action which will be taken to protect same.

N. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT

Any project that disturbs more than one (1) acre is subject to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. Under provisions of that permit, the JOC Contractor shall be designated as permittee, and shall be responsible for providing necessary material and taking appropriate measures to assure that all discharges authorized by the General Permit shall be consistent with the terms and conditions of the General Permit. The AZPDES Construction General Permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from www.adeq.state.az.us/environ/water/permits/links.html or viewed at the City of Tempe Engineering Division.

The JOC Contractor shall complete and submit the following for any Job Order that qualifies for this provision:

1. **Notice of Intent (NOI) for Coverage** under AZPDES Permit No. AZG2003-001 for Construction Activity Discharges to Waters of the United States, including certification of the signature.

2. **Storm Water Pollution Prevention Plan (SWPPP)** for the project.

3. **Notice of Termination (NOT)** of coverage under the AZPDES Construction General Permit.

All subcontractors shall comply with all requirements of the AZPDES Construction General Permit and the project SWPPP. The SWPPP shall be kept on the project site at all times, and shall be retained by the permittee for three (3) years following project completion.

The JOC Contractor shall submit completed and signed NOI forms **PRIOR TO NOTICE TO PROCEED** to the following address: **Stormwater Program – Water Permits Section/ NOI**, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix 5415B-3, Arizona 85007. Copies shall be transmitted to the City's construction project manager at the time of the preconstruction meeting. The JOC Contractor shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the contractor (or any of its appropriate subcontractors) to submit the NOI forms within this time frame (or to promptly make revisions to those forms as requested by the City) which prevents **submittal** of the forms to the Arizona Department of Environmental Quality within the mandated deadline of forty-eight (48) hours prior to start of construction will result in delay of the start of construction. The contractor will not be entitled to any claim for additional compensation for additional costs resulting from such a delay in the construction start date. The NOI shall be posted on the construction site along with the SWPPP.

It is the permittee's responsibility to perform inspections of all storm water pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The contractor is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

All SWPPP reports required under this contract shall be available to the public in accordance with the requirements of the AZPDES Construction General Permit No. AZG2003-001. The JOC Contractor, as the permittee of construction activities with storm water discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality.

No condition of the AZPDES Construction General Permit as well as the SWPPP shall release the contractor from any responsibilities or requirements under other environmental statutes or regulations.

Upon total project completion, acceptance, and de-mobilization, the contractor shall submit its completed, signed Notice of Termination (NOT) form to **Stormwater Program – Water Permits Section/ NOT**, Arizona Department of Environmental Quality, 1110 West Washington 5415B-3, Phoenix, Arizona 85007 with a copy to the City's construction project manager thereby terminating all AZPDES Construction General Permit coverage for the project.

The unit prices for the proposal items shall include all material, labor, and other incidental costs relating to the preparation and submittal of all AZPDES Construction General Permit related forms to Arizona Department of Environmental Quality; preparation, revision and maintenance of the SWPPP; and provision, installation, operation, and maintenance of all pollution control devices. The cost of the activities and items within this provision as provided by the contractor is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include contractor costs in order to assure proper operation of the pollution control devices installed, including all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events or other runoff or releases on the project.

VII. COMMENCEMENT, PROSECUTION AND PROGRESS

A. START OF WORK

Work shall start as soon as practical, and in no case later than seven (7) calendar days after the Notice to Proceed for each Job Order and shall be completed within the agreed upon Job Order Time.

B. CONTRACT COMPLETION DATE

The date established in the Job Order Notice to Proceed is for completion of all or specified portions of the Work. This includes items of Work to be completed under an owner allowance or as part of a contingency item. The stated contract completion date will include weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or a number of calendar days after issuance of the Notice to Proceed.

C. JOC CONTRACTOR'S CONSTRUCTION SCHEDULE

Prior to the start of work, a construction progress schedule shall be required for all projects and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

D. HINDRANCES AND DELAYS

1. Except as provided in Paragraph 2 immediately below, no charge shall be made by the JOC Contractor for hindrances or delays from any cause during the progress of any portion of the work embraced in this contract; but such delays, if due to no fault or neglect of the JOC Contractor, shall entitle the JOC Contractor to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Engineer provided the JOC Contractor gives the Engineer immediate notice in writing of the cause of such delay.

2. The parties agree to negotiate for the recovery of damages related to expenses incurred by the JOC Contractor for a delay under the following circumstances:

    a. If the City is solely responsible for the delay which is unreasonable under the circumstances, and

    b. Which delay was not within the contemplation of the parties to the contract at the time the contract was entered into, and

    c. The JOC Contractor can show the impact of the delay on the critical path of the construction activity as indicated in an approved Construction Progress Management schedule.

3. Unless specifically provided for in the Special Provisions, the maximum compensation for an unreasonable or unforeseen delay shall not exceed the daily amount specified for liquidated damages in MAG Specification 108.9 as based on the original contract amount.

4. This section shall not be construed to void any provisions of this contract, which require notice of delays, which provide for alternative dispute resolution or other procedures for settlement, or which provide for liquidated damages.

E. LIQUIDATED DAMAGES

Unless otherwise specified, liquidated damages will be applied in accordance with the MAG Specification 108.9. Completion of the Work as stated in this Contract is the same as completion of the work as stated in MAG Specification 108.9. Damages will be applied at the amounts specified in Table 108.1.

F. NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract will not be construed as a waiver of such provisions nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each and every provision.

G. JURISDICTION

This contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof.

An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

H. SURVIVAL

All warranties, representations and indemnifications by the JOC Contractor will survive the completion or termination of this Contract.

I. MODIFICATION

No supplement, modification or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract except as expressly provided herein to the contrary.

J. SEVERABILITY

If any provision of this contract or the application thereof to any person or circumstance is held invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

K. INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

L. TIME IS OF THE ESSENCE

Time of each of the terms, covenants and conditions of this Contract is hereby expressly made of the essence.

M. THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the JOC Contractor. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC Contractor and not for the benefit of any other party.

N. COOPERATION AND FURTHER DOCUMENTATION

The JOC Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

O. GUARANTEE AND WARRANTY

The guarantee and warranty period per MAG Specification 108.8 for each individual Job Order starts with the Final Acceptance of the Job Order Work.

VIII. MEASUREMENTS AND PAYMENTS

A. CONTRACT PRICE ADJUSTMENTS

The increase or decrease in Contract Price resulting from a change in the City requested change in Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Job Order or as subsequently agreed to between the parties;

2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and

3. Costs, fees and any other markups.

The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved Job Order.

If an increase or decrease cannot be agreed to as set forth in items 1 through 3, above, and the City issues a Change Order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract. JOC Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to the City or the JOC Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

If the City and the JOC Contractor disagree upon whether the JOC Contractor is entitled to be paid for any services required by the City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, the City and the JOC Contractor shall resolve the disagreement pursuant to MAG Specification 110.

As part of the negotiation process, JOC Contractor shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

If the parties are unable to agree and City expects the JOC Contractor to perform the services in accordance with City's interpretations, JOC Contractor shall proceed to perform the disputed services, conditioned upon City issuing a written order to JOC Contractor (i) directing JOC Contractor to proceed and (ii) specifying City's interpretation of the services that are to be performed.

B. RECORD KEEPING AND FINANCE CONTROLS

Records of the JOC Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC Contractor shall be kept on a generally accepted accounting basis.

The City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit the JOC Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if, upon audit of the JOC Contractor's records, the audit discloses the JOC Contractor has provided false, misleading, or inaccurate cost and pricing data.

The JOC Contractor shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has/have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit it's records to verify the accuracy and appropriateness of pricing data.

C. MISCELLANEOUS REMOVAL AND RELOCATIONS

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the Plans and Specifications, and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, and other comparable items of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, and are included in this category.

D. APPROXIMATE QUANTITIES

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the work under this

Contract; and the JOC Contractor further agrees that the City of Tempe will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the JOC Contractor from the execution and completion of the whole or any part of the work in accordance with the Plans and Specifications herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

Contract; and the JOC Contractor further agrees that the City of Tempe will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the JOC Contractor from the execution and completion of the whole or any part of the work in accordance with the Plans and Specifications herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

E. RETENTION

The Owner has elected to require five percent (5%) retention for each Job Order pursuant to A.R.S. §34-607 (B)(7). This retention requirement may be waived by the Owner.

SECTION 6. SPECIAL PROVISIONS

I. KEY CONTACTS

City of Tempe Engineering (Project Manager)	Larry Fosholt	480-350-2922
City of Tempe Redevelopment/Special Projects	Tim Jones	480-350-8711
City of Tempe Engineering		480-350-8200
Blue Stake		602-263-1100

II. UNIFORMED POLICE OFFICERS

During the course of construction, it may be required to have a uniformed police officer present to facilitate traffic control per the Tempe Barricade Manual and the Traffic Engineer's direction. Uniformed police officers will be paid for by the City.

III. OPEN TRENCHING AND STEEL PLATES

The maximum amount of open trench in any state of trenching or backfilling shall be limited to five hundred feet (500'). All trenches shall be completely backfilled or covered using steel plates at the end of each working day.

The use of steel plates shall not exceed seventy-two (72) hours between completion of work in trench and final patch. Steel plates are to be installed according to Detail T-450 of the Tempe Supplement to the MAG Details. All steel plates installed will be recessed into the existing pavement by milling until the top of the plate is flush with the top of the pavement.

V. IRRIGATION AND LANDSCAPE REPAIR

The Contractor shall repair all sprinkler and irrigation systems that are disturbed in the course of the work. There will be no separate payment for irrigation and landscape repair, the cost of which will be incidental to other bid items. It is highly recommended that the Contractor meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

VI. SEQUENCE OF CONSTRUCTION

The Contractor shall submit a project sequencing schedule to the City Engineer for review at the pre-construction conference. The Contractor is on notice that the City will review the proposed schedule to insure limited community impact.

VII. COORDINATION WITH OTHER CONTRACTORS

Coordination between contractors may be required. Should the JOC Contractor cause damage to the work or property of any separate contractor at the site, or should any claim arising out of or resulting from the JOC Contractor's performance of the work at the site be made by any separate contractor against the JOC Contractor, Design Engineer, or Construction Manager or any other person, JOC Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC Contractor shall, to the fullest extent permitted by Laws and Regulations, defend, indemnify and hold Owner, its officers, officials, employees and volunteers harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of or resulting from any action, legal or equitable, brought by a separate contractor against Owner, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC Contractor's performance of the work.

Should a separate contractor cause damage to the work or property of JOC Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, JOC Contractor shall not institute any action, legal or equitable against Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them on account of such damage or claim.

If JOC Contractor is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and Owner and JOC Contractor are unable to agree as to the extent of any adjustment in Completion Time attributed thereto, JOC

Contractor may make a claim for an extension of time. An extension of the Completion Time shall be JOC Contractor's exclusive remedy with respect to Owner, Design Engineer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them for activities that are its respective responsibilities.

Cooperation between contractors shall be in accordance with MAG Specification 105.7.

VIII. PARTNERING

The foundation and development of a partnering relationship with the JOC Contractor is a goal of the Owner, the Engineer, and the City Construction Manager. This relationship is ideally based on understanding and acceptance of the differing roles and objectives of each party while cooperating on common goals.

Partnering objectives include efficient and effective contract performance, prompt conflict resolution, completion of contract work within budget, on schedule and in accordance with the Plans and Specifications. The guiding principles of the partnering process will be the improvement of working relationships, the improvement of the quality of construction, and improved business practices.

The City will determine if a Partnering workshop is required for a Job Order. If so determined, the Construction Manager will conduct an initial formal partnering workshop with city staff members, the design team, the general contractor and key subcontractors. This will be scheduled between the award of the Contract and the Notice to Proceed with the purpose of establishing a positive atmosphere of cooperation between all the members of the project team.

Role and expectations of all attendees will be discussed and goals agreed upon. This will be reinforced with additional meetings at the 50% and 90% completion stage. General partnering discussions will be part of each weekly meeting.

A fundamental aspect of partnering and a key goal of the development of the partnering relationship is dispute resolution in a timely, professional and non adversarial manner.

In the event that the Owner determines, in its sole discretion, that a dispute cannot be resolved by this partnering process, the City Engineer shall notify the Neutral Evaluator and all disputes shall be resolved pursuant to MAG Specification 110.

Payment for partnering facilities and salary cost of the facilitator shall be paid by the Owner. Owner shall bear other incidental costs related to the preparation and distribution of written materials both in preparation of and forthcoming from partnering sessions. JOC Contractor shall pay the cost of lunch meals for those individuals in attendance at partnering sessions. Salary costs of all JOC Contractor personnel shall be paid by the respective participating JOC Contractor.

Owner shall make all arrangements for the meeting room and facilities necessary to conduct the partnering session and shall select the facilitator.

The JOC Contractor and Owner shall submit to the partnering process set forth herein for any dispute which arises from the interpretation of the Contract Documents or directions given under this Contract within five (5) days of when the dispute is or should have been discovered by either party.

IX. DEMOLITION SERVICES FOR COMMERCIAL AND RESIDENTIAL PROPERTIES

Under clarification issued by the Environmental Protection Agency (EPA) on July 28, 1995, (FR 38725,26) demolition by municipalities of isolated commercial and residential buildings for purposes of nuisance abatement are exempt from National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations. The JOC Contractor shall obtain an 'Earth Moving Permit' from Maricopa County, Environmental Services Department, Air Quality Division (602) 506-6727, for general building demolition and site clearing activities on parcels over 0.10 acre.

The JOC Contractor shall be responsible for the removal of all hazardous and regulated materials from the site of the work.

The following standard specifications shall apply to all demolition work:

Part 1 – General

1.1. Work Included – Furnish all labor, materials, equipment, transportation, technician expertise, record keeping and services necessary for general demolition, hazardous materials removal and disposal, and site clearing such that the property shall be left in safe condition free from nuisance and hazard. "Hazardous materials" means those materials designated by Tempe as requiring special management during transport, storage, treatment, and/or disposal. This includes, but is not limited to: hazardous waste, polychlorinated biphenyls (PCB's); asbestos; and Special Wastes as designated by the State of Arizona. Hazardous waste is clarified as a hazardous material, which meets the established criteria of the Resource Conservation and Recovery Act (RCRA) regulations.

1.2. Quality Assurance – The Tempe Building Code consists of the International Building Code (I.B.C.), 2003 Edition, and the City of Tempe amendments to the 2003 I.B.C. and shall govern the work of this agreement. The JOC Contractor shall obtain a Haul Permit from the City's Public Works Department, a Demolition Permit from the City's Development Services Department, an Air Quality Permit from Maricopa County Health Services Department, and all other applicable permits prior to commencing work. An asbestos NESHAP is required for the work of this contract under the "Residential Building Exemption". The JOC Contractor shall comply with the EPA's revised asbestos NESHAP regulations for all Category I and Category II materials (friable and non-friable asbestos containing materials (ACM)). The JOC Contractor shall treat, transport and dispose of all hazardous materials received pursuant to this contract in an environmentally sound manner and in compliance with all applicable local, state

and federal laws and regulations. The JOC Contractor shall dispose of all hazardous materials at an EPA approved landfill.

1.3. Site Conditions – The City's Water Utilities Department Environmental Division will investigate the site and identify, but not remove, all known hazardous or regulated materials. The JOC Contractor shall remove all hazardous or regulated materials identified by the City and any additional discovered. The JOC Contractor shall not close or obstruct roadways, driveways, sidewalks, or hydrants without proper permits from the City's Public Works Department.

1.4. Scheduling/Sequencing – The JOC Contractor shall coordinate the work with utility companies having facilities on-site. The City will make arrangements for electrical, gas, and water services to be disconnected prior to removal of hazardous or regulated materials. As demolition is normally scheduled to occur as soon as possible after completion of removal operations, the JOC Contractor shall verify satisfactory utility conditions prior to commencing operations, which might jeopardize facilities.

Part 2 – Products

2.1. Materials Salvage – The JOC Contractor is encouraged to salvage and recycle glass, aluminum, copper, etc. as well as any serviceable doors, fixtures, lights, trees, shrubs, etc. Salvageable items are the property of the JOC Contractor and must be removed from the property within the time period of the contract. Historic artifacts such as cornerstones and their contents, commemorative plaques and tablets, as well as other articles of historic significance remain the property of the City. Notify the City if such articles are encountered and obtain direction for appropriate method of removal and disposition.

2.2. Fill Materials – Native or imported fill materials shall conform to the requirements identified below.

Part 3 – Execution

3.1. Inspection – Prior to the start of demolition work, the JOC Contractor shall inspect areas in which work will be performed. Photograph existing conditions of structures and surfaces and surrounding properties, which could be misconstrued as damage resulting from demolition work; file photographs with the City prior to starting demolition.

3.2. Preparation – The JOC Contractor shall notify Blue Stake and coordinate locating of underground facilities. The JOC Contractor shall not carry on any function, work, or operation in closer proximity to any high-voltage overhead power line than is permitted by A.R.S. §40-360.42 et seq. without first notifying the utility owner.

3.3. Demolition – The JOC Contractor shall perform demolition of electrical utilities in accordance with power and telephone company requirements. Disconnect, remove, abandon, and identify designated utilities within demolition areas.

A. Remove foundation walls and footings to a depth of 12 inches below grade.

B. Remove slabs-on-grade. Decision to remove slabs will be made on a project basis.

C. Remove all incidental-landscaping materials, any landscaping in poor condition, or in conflict with general demolition and site clearing

operations. Remove all stumps and dead landscaping elements. Remove all trees of caliper less than six-(6) inches.

D. Remove all demolition materials from site. Remove all debris and demolished landscaping materials from site. Do not burn or bury materials on site.

E. Backfill areas excavated, open pits, holes, and areas where standing water may accumulate. Fill materials required to raise an area shall be placed in six-(6) inch lifts, moistened, and compacted such that the required densities are obtained throughout the lift.

F. Compact soils to 90 percent maximum density in accordance with the American Society for Testing and Materials (ASTM) D698. Granular and imported soils shall be compacted as moisture content of optimum to optimum minus 3 percent. Clay or on site soils shall be compacted at a moisture content of optimum to optimum plus 3 percent.

G. Exposed loose soils shall be scarified, moistened, and compacted to a minimum depth of eight (8) inches. Clay soils shall be compacted only to recommended densities and shall not be over-compacted. Sewer caps shall be installed by the JOC Contractor.

H. The site will be brought to rough grade under this contract. Rough grade and compact areas affected by demolition to maintain site grades and contours. Areas to be rough graded shall extend to the limits of the property.

3.4. Field Quality Control – The JOC Contractor shall provide water and equipment for dust control.

3.5. Protection - Protect existing landscaping materials scheduled to remain. Prevent movement or settlement of adjacent structures. Provide bracing or shoring as necessary. Conduct operations with minimum interference with public or private access. Obtain written permission from adjacent property owners when equipment will traverse, infringe upon, or limit access to their property.

3.6. Schedules - Fill Materials - Native or imported fill materials shall conform to the following requirements:

Graduation (ASTM C136) Percent passing by weight Sieve Size	Imported Fill	Aggregate Base Course
6"	100	---
1-1/2"	---	100
No. 4	---	45-90
No. 200	50 max.	12 max.
Minimum Plasticity Index (ASTM D423 & D424)	10	---
Maximum Expansion Potential [1]	1.5%	---
Max Percent Soluble Sulfates	0.10	0.10

[1]Expansion measured upon remolded sample compacted to 95% of the maximum dry density as determined in accordance with ASTM D698 at a moisture content approximately 2% below optimum.

3.7. Cleaning – The JOC Contractor shall maintain the right-of-way and keep it clean continuously throughout demolition operations. Upon completion of demolition, remove temporary work. Repair adjacent surfaces soiled or damaged by demolition work. Leave project area clean.

3.8. Attachment - Plot plan sketch on 8½ x 11 inch paper for submittal to Maricopa County, Environmental Services Department, Field Services Division, Air Pollution Control as required for Application for Earth Moving Permit, Demolition & Dust Control Plan. An 81/2 x 11 inch plot plan sketch shall also be submitted with the Demolition Permit to the City's Development Services Department.

SECTION 7. FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order to the Contract. **They are included in this Contract only as reference and will also be provided in each Job Order.**

LIST OF SUBCONTRACTORS SB-1

STATUTORY PERFORMANCE BOND B-1

STATUTORY PAYMENT BOND B-3

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS AFF-1

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT REGARDING HEALTH INSURANCE AFF-2

CITY OF TEMPE GUIDELINES FOR IMPLEMENTATION OF HEALTH INSURANCE AFF-3

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor Name	Address	Type of Work	% of Total Contract

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 6704081, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this _____ day of _____, 2008.

_____
PRINCIPAL SEAL

BY:_____

**
_____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto_____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 6704081, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the construction provided for the contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

Witness our hands this _____ day of _____, 2008.

_____

PRINCIPAL SEAL

BY:_____

**

_____

SURETY SEAL

BY:_____

_____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

JOC CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above project.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project against the City of Tempe. The undersigned further agrees to indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2008.

_____
Notary Public

_____
My Commission Expires

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF JOC CONTRACTOR
REGARDING
HEALTH INSURANCE

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of $30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company:_____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBCRIBED AND SWORN to before me this _____ day of _____, 2008.

_____
Notary Public

My commission expires:

_____

City of Tempe
Guidelines for Implementation of Health Insurance

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of $30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of $30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.

2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four (24) hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.

3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.

4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.

5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.

6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.

8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

Glenn Kephart, P.E.
Public Works Manager

SIGNATURE PAGE

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereinabove named, on the date and year first herein written.

CITY OF TEMPE
a Municipal Corporation

_____
MAYOR

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/ City Engineer

APPROVED AS TO FORM:

_____
City Attorney

The Job Order Contractor warrants that the person who is signing this Contract on behalf of the Job Order Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

Job Order Contractor:

_____
Name

_____
Title

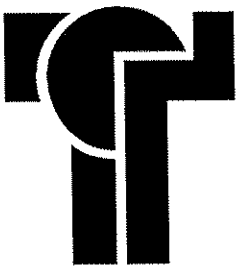
City of Tempe Transaction Privilege License (Sales Tax) Permit No.

_____
(Corporate Seal)

Certified to be a true and exact copy

_____
Karen M. Fillmore, Records Specialist

Witness: If Contractor is an Individual



COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

For

DEMOLITION
OF
COMMERCIAL AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

BCS ENTERPRISES, INC.

CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

Vice Mayor – J. Hut Hutson

Mark Mitchell	P. Ben Arredondo
Barbara J. Carter	Onnie Shekerjian
Shanna Ellis	J. Hut Hutson

City Manager – Charles W. Meyer

City Engineer – Andy Goh, P.E.

2008

TABLE OF CONTENTS

VOLUME 1

Notice to Job Order Contractor N-1

CONTRACT C-1

SECTION 1 - Terms and Definitions C-1

SECTION 2 - Scope of the Work C-7

SECTION 3 - Contract Price and Job Order Price C-8

I. Contract Price C-8
II. Job Order Price C-8

SECTION 4 - Time of Completion C-8

I. Contract Time C-8
II. Job Order Time C-10

SECTION 5 - General Provisions C-10

I. JOC Contractor Requirements and Conditions C-10
II. Award and Execution of Contract C-11
III. Job Order Scope of Work C-14
IV. Control of Work C-16
V. Control of Materials C-20
VI. Legal Regulations and Responsibilities to Public C-20
VII. Commencement, Prosecution and Progress C-27
VIII. Measurement and Payments C-29

SECTION 6 - Special Provisions C-32

I. Key Contacts C-32
II. Uniformed Police Officers C-32
III. Open Trenching and Steel Plates C-32
IV. Confidentiality of Plans and Specifications C-32
V. Irrigation and Landscape Repair C-33
VI. Sequence of Construction C-33
VII. Coordination with Other Contractors C-33
VIII. Partnering C-34
IX. Demolition Services for Commercial and Residential Properties ... C-35

Table of contents continued

SECTION 7 – Forms C-36

Subcontractor List SB-1

Performance Bond B-1

Payment Bond B-3

JOC Contractor's Affidavit (Settlement of Claims) AFF-1

JOC Contractor's Affidavit (Health Insurance) AFF-2

SIGNATURE PAGE S-1

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

NOTICE TO JOB ORDER CONTRACTOR

Each Job Order Proposal by the Job Order Contractor shall be submitted to the City of Tempe, Arizona, Public Works Department, Engineering Office, City Hall West Garden Level, 31 East 5th Street, Tempe, Arizona 85281. All correspondence for the Job Order shall reference an assigned City of Tempe project title and project number.

The proposed work for each Job Order will be determined in accordance with the provisions of this Contract and shall be accomplished in accordance with the "Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction", and "The City of Tempe Supplements thereto" except as otherwise set forth in the Contract Documents.

The JOC Contractor is required to submit, from its insurance carriers, a three (3) year history of both its Experience Modification Factor (EMOD) and its loss ratio. In addition, all Contractors are required to submit an affidavit certifying that its company and all of its subcontractors, defined as doing work in excess of $30,000.00 as determined at the start of each project, will have and will continue to have during the course of the contract health insurance in force for all employees. The employer must offer insurance to employees for its eligible dependents.

Work shall not start until after the date of issuance of a Job Order Notice to Proceed and shall be completed within the number of calendar days shown in the Job Order.

The City of Tempe reserves the right to reject the JOC Contractor's Proposal.

Please direct any questions to the City of Tempe Engineering Division at (480) 350-8200.

Andy Goh, P.E.
Deputy PW Manager/City Engineer

12/20/07
Date

CONTRACT

THIS CONTRACT is made and entered into this 10th day of January, 2008, by and between the City of Tempe, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona hereinafter designated the "City", and BCS Enterprises, Inc., of the City of Gilbert, County of Maricopa, and State of Arizona, hereinafter designated as the "JOC CONTRACTOR."

The City intends to have a number of Projects which will be constructed as Job Orders.

To undertake the construction administration of said Project, the City will utilize a "Construction Manager Professional". The name of the Construction Manager Professional will be provided at the preconstruction meeting for each Job Order.

The JOC Contractor has represented to the City the ability to provide or procure construction and design services. Based upon this representation, the City engages the JOC Contractor to provide these services.

All work done under this contract shall be accomplished in accordance with the "MAG Specifications" except as may be modified in the Contract Documents. In the event of any conflict between these Contract Documents and the requirements of the MAG Specifications, these Contract Documents shall prevail.

The JOC Contractor, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees, for itself, its heirs, administrators, successors, and assigns as follows:

SECTION 1. TERMS AND DEFINITIONS

In the event of any conflict between the terms and definitions set out below and the terms and definitions found in the "MAG Specifications", the terms and definitions set out below shall prevail in interpreting these Contract Documents unless the context requires otherwise.

Addendum – A written modification of the Contract Documents after the Contract Documents have been issued by the City Engineer but ten (10) days prior to City Council Award of this Contract. This definition replaces the MAG Specification definition of Addendum.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while delivering a quality and functional Project that meets City requirements.

Amendment – A written modification of the terms of this Construction Services Contract.

Award – The formal action of the City Council to accept this Contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

City – The City of Tempe, a public body or authority and municipal corporation, with whom the JOC Contractor has entered into this Contract and for whom the services are to be provided pursuant to this Contract. The City is the Agency or Owner or Contracting Agency for purposes of this contract. This definition replaces the MAG Specification definition of City.

City's Contingency – A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the City's contingency will be set solely by the City and will be in addition to the project costs included in the JOC Contractor's Job Orders.

Construction Fee – The JOC Contractor's administrative costs, home office overhead, and profit, whether at the JOC Contractor's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are included in the General Conditions of the construction phase.

Construction Manager Professional – The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth in this Contract and in the Construction Manager Professional's Contract with the City.

Contract – This written document, including its exhibits and attachments signed by the City and JOC Contractor covering the Job Order Construction Services and including other documents (the "Contract Documents") itemized and referenced in or attached to and made part of this Contract. This definition replaces the MAG Specification definition of Contract.

Contract Documents – This Contract, exhibits, attachments, "General Provisions", "Special Provisions", "Technical Specifications", "Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction" as amended by the City of Tempe, "Plans", "Performance Bonds", "Payment Bonds", all Written Amendments, Addendums and Change Orders to this Contract and any other documents so designated in this Contract. This definition replaces the MAG Specification of Contract Documents.

In case of a discrepancy or conflict, the order in which the Contract Documents govern is as follows from the highest to lowest: Special Provisions, Technical Specifications, Plans, General Provisions, Tempe Supplement to the M.A.G. Specifications, Tempe Supplement to the M.A.G. Details, M.A.G. Standard Specifications and Standard Details.

Contract Price - means the amount or amounts set forth in this Contract subject to Contract Amendments in accordance with this Contract.

Contract Services - means the services required by the Contract Documents.

Contract Time - means the time set forth in this Contract.

Cost of the Work – The direct costs necessarily incurred by the JOC Contractor in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the JOC Contractor's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Cost Model – A breakdown of the scope of the Project that is initially developed by the JOC Contractor during the conceptual design phase and based on information from the Project Team and the JOC Contractor's records of similar projects. The model will evolve as the design progresses and be maintained by the JOC Contractor throughout the design phase and will include any assumptions and clarifications made by the JOC Contractor. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team.

Day(s) – Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the JOC Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC Contractor during the design phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule of Values, Alternative System Evaluations, Procurement Strategies and Plans, Cost Estimates, Construction Market Surveys, Cash Flow Projections, GMP Proposals, Subcontractor Procurement Plan, Subcontractor Contracts, Subcontractor Bid Packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

Design Engineer – The person, firm or corporation having a contract with the City to furnish design services for this project.

Design Engineer's Consultant – A person, firm, or corporation having a contract with the Design Engineer to furnish services required of the Design Engineer, as the Design Engineer's independent professional associate or consultant with respect to the Project.

Design Professional - A qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order.

Differing Site Conditions - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

Duration of the Work - The number of Days from a Job Order Notice To Proceed to Substantial Completion.

Effective Date of this Contract – The date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the two parties signs this Contract.

Engineer – The City Engineer acting directly or through his duly authorized representative. This definition replaces the MAG Specification definition for Engineer.

Final Acceptance – The completion of a Job Order as prescribed in each Job Order.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the JOC Contractor during the construction phase: payroll costs for the project manager or construction manager (but not both) for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of consultants not in the direct employ of the JOC Contractor or subcontractors; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

JOC Contractor – Firm selected by the City to provide or procure construction and design services as detailed in this Contract.

JOC Contractor's Representative - The person described in each Job Order.

JOC Contractor's Senior Representative - The person described in each Job Order.

Job Order - A specific written contract between the Owner and the JOC Contractor for a Job Order including a scope, a Job Order Price, a Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and the Job Order Contractor's proposal either by reference or inclusion.

Job Order Price - The sum of the maximum cost of the Work for a Job Order, including, but not limited to, the construction price of the JOC Contractor(s); the construction price of the subcontractor(s); the price of the subconsultant(s); Labor; Overhead and Profit; general conditions fee; taxes, bonds, insurances costs; and the JOC Contractor's contingency as proposed and approved pursuant to this Contract. The approved Job Order Price will be made part of this Contract by executing a Job Order.

JOC Payment Request - The City form used by the JOC Contractor to request progress payments for Job Orders in accordance with this Contract.

Job Order Time - The time from the Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing a Job Order.

Laws and Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Legal Requirements - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

"MAG Specifications" – Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction, latest edition, and the City of Tempe Supplement thereto.

Notice of Award – The written notice by the City to the JOC Contractor stating that upon compliance by the JOC Contractor with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver this Contract. This definition replaces the MAG Specification definition for Notice of Award.

Notice to Proceed – A written notice given by City to the JOC Contractor fixing the date on which the JOC Contractor will start to perform the JOC Contractor's obligations under this Contract. This definition replaces the MAG Specification definition for Notice to Proceed.

Plans – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the JOC Contractor during the construction phase and which have been prepared or approved by the Design Engineer and the City.

This definition includes Plans that have reached a sufficient stage of completion and have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g., conceptual design Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but "NOT FOR CONSTRUCTION"). Shop drawings are not Plans as so defined. This definition replaces the MAG Specification definition for Plans.

Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC Contractor to illustrate materials or equipment for some portion of the Work.

Project – The total design and construction of which the design services and construction Work to be provided may be the whole or a part of a Job Order. This definition replaces the MAG Specification definition for Project.

Project Team – Construction services team consisting of the Design Professional, JOC Contractor, the City (Water Utilities Department representatives, Design Project Manager, Construction Project Manager), and Construction Manager Professional and other stakeholders who are responsible for making decisions regarding the Project. The other stakeholders will be identified in the preconstruction conference.

Record Documents – The documents created pursuant to this Contract.

Samples – Physical examples of materials, equipment or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC Contractor and submitted by the JOC Contractor to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

Site – The land or premises on which a Job Order is located.

Specifications – The part(s) of the Contract Documents labeled as Technical Specifications for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. This definition replaces the MAG Specification definition for Specifications.

Subcontractor or Subconsultant – An individual, firm, entity or corporation having a direct contract with the JOC Contractor who undertakes to perform a part of the design phase services or construction phase Work at the site for which the JOC Contractor is responsible. This definition replaces the MAG Specification definition for Subcontractor.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City, at the City's discretion, can occupy and use the Project or a portion thereof for its intended purposes.

Partial acceptance of buildings shall include, as a minimum, (a) approval by City Fire Marshall and local authorities including issuance of the Certificate of Occupancy (b) all systems in place, functional, and displayed to the City or it's representative; (c) all materials and equipment installed; (d) all systems reviewed and accepted by the City; and (e) Heating, Ventilation and Air Conditioning test and balance completed at least 30 days prior to projected substantial completion.

For buildings and other projects, partial acceptance may also include (a) elevator permit; (b) draft Operation and Maintenance manuals and record documents reviewed and accepted by the City; (c) City operation and maintenance training completed; (d) landscaping and site work; and (e) final cleaning.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by JOC Contractor or any Subcontractor.

Total Float – Number of calendar days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work – Any or all of the improvements as required by the Contract Documents, and the construction, demolition, reconstruction, and repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto. This definition replaces the MAG Specification definition for Work.

SECTION 2. SCOPE OF THE WORK

The JOC Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work specified in the Job Order for which it is issued a Job Order Notice to Proceed in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for a specific Job Order in accordance with the Job Order.

The JOC Contractor shall construct the same and install the material therein for the Owner in a good and workmanlike and substantial manner and to the satisfaction of the Owner or his properly authorized agents and strictly pursuant to and in conformity with the Contract Documents and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

Minor design services may be required for some Job Orders. For those Job Orders that may require design services the Contractor shall seek the services of an Arizona registered professional to prepare plans for permitting.

The Design Professional shall maintain at least $1,000,000 Professional Liability Coverage.

All documents prepared by the Design Professional are subject to review by the City. Review by the City does not relieve any Design Professional from the professional liability associated with the documents they have prepared.

The JOC Contractor's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Contract Services. A JOC Contractor's Representative will be assigned for each Job Order. The JOC Contractor's Representative shall communicate regularly with the City and shall be vested with the authority to act on behalf of the JOC Contractor.

SECTION 3. CONTRACT PRICE AND JOB ORDER PRICE

I. CONTRACT PRICE

This Contract will have a maximum amount of $1,000,000.

II. JOB ORDER PRICE

The City intends that each Job Order performed under this Contract will average $6,000 to $8,000 in construction costs, but in no event will any Job Order exceed $1,000,000.

Each Job Order price is subject to adjustments made in accordance with this Contract.

Unless otherwise provided in the Contract Documents, each Job Order price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

The Job Order Price shall use the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor & Materials	$ _____
Allowances	$ _____
Subtotal	**$** _____
Overhead and Profit (per Table 1)	$ _____
Total	**$** _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Job Order Price Total *	**$** _____

Table 1 shows the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the Contractor's Contingency is the value used in the matrix of Table 1 for determining the overhead and profit multiplier to apply to a Job Order.

Table 1
(Job Order Price versus Overhead and Profit Multiplier)

Job Order Price *	$0 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 to $499,999	$500,000+
Overhead and Profit Multiplier	13	12	11	10	9

* The combined total of the Job Order Price is used in Table 1 for determining the Overhead and Profit Multiplier.

The agreed upon insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

Insurance Percentage:	2.25%	
Bonds (Performance and Payment)	2.5%	($100,000 or less)
	1.5%	($100,000 or more)
Sales Tax Percentage	5.27%	

The JOC Contractor guarantees to bring each Job Order within the Job Order Price or JOC Contractor alone will be required to pay the difference between the actual cost and the Job Order Price.

The scope of work will vary with each Job Order. At the beginning of each Job Order, a scope conference will be scheduled to define design and construction services required of the JOC Contractor. The Job Order and related documents will be given to the JOC Contractor.

The JOC Contractor will be asked to provide a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order based on the scope meeting and the provided documents.

The City will review the submitted proposal. The City and JOC Contractor shall negotiate in good faith and, as expeditiously as possible, agree upon the Job Order Price and the Duration of the Work. Upon reaching concurrence, the parties shall execute the Job Order reflecting the terms of the Job Order.

SECTION 4. TIME OF COMPLETION

The JOC Contractor further covenants and agrees at its own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation for performing all of the work for the construction of each Job Order agreed to pursuant to this Contract and to construct the same and install the material therein, as called for by this Contract and each Job Order free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in each Job Order Notice to Proceed.

I. CONTRACT TIME

Contract Time shall commence on the Notice to Proceed date for this Contract. This Contract shall be in effect for a twelve (12) month period, or until $1,000,000 has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew for twelve (12) months or the balance of the maximum contract amount or as otherwise specified. In any event, the maximum duration of this Contract is three (3) years from its commencement date.

The option to renew will be exercised by the City or the option to renew will not be exercised by the City based on the JOC Contractor's successful performance and the needs of the City as determined by the City in its sole discretion.

The Contract will remain in full force and effect during the performance of any Job Order.

II. JOB ORDER TIME

Job Orders may be issued at any time during the duration of this Contract.

Each Job Order will include a Job Order Notice to Proceed date, Duration of the Work as determined pursuant to each Job Order and a calculated Substantial Completion date.

JOC Contractor agrees that it will commence performance of the Work and achieve the Job Order Time.

Each Job Order Time shall be subject to adjustment in accordance with this Contract.

SECTION 5. GENERAL PROVISIONS

I. JOC CONTRACTOR REQUIREMENTS AND CONDITIONS

A. LICENSES

Prior to execution of this contract, the JOC Contractor must possess a valid City of Tempe Transaction Privilege License and shall provide the Permit Number of such for validation and must carry the appropriate State of Arizona Contractor License.

The Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed work at the time of the Job Order Proposal. If the subcontractor does not have the appropriate license, the City reserves the right to reject the Proposal.

B. EXAMINATION OF PREMISES

The JOC Contractor shall visit the site of each Job Order and shall fully acquaint itself with the conditions as they exist, so that it may fully understand the facility, difficulties and restrictions attending the execution of the work.

Subcontractors shall also thoroughly examine and be familiar with the Specifications and other Contract Documents. The failure of the JOC Contractor to obtain, receive or examine any addenda to the proposed Contract Documents, or to visit the site and acquaint itself with the conditions there existing, shall not relieve it from any obligation with respect to its Job Order Proposal.

By submitting a Job Order Proposal, the JOC Contractor agrees that it has examined the site, Specifications and other Contract Documents and accepts, without recourse, all site conditions and the proposed Contract Documents.

C. GOVERNMENT APPROVALS AND PERMITS

Unless otherwise provided, JOC Contractor shall obtain or assist the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The JOC Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

The City shall be responsible for City of Tempe review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City shall also pay for utility design fees for permanent services.

JOC Contractor shall be responsible for all other permits and review fees not specifically listed in this Contract.

JOC Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the JOC Contractor's responsibility.

II. AWARD AND EXECUTION OF CONTRACT

A. EXECUTION OF CONTRACT

The form of the contract, which the JOC Contractor will be required to execute and the form of bonds which it will be required to furnish for each Job Order, are included in the Contract Documents and should be carefully examined by the JOC Contractor. The JOC Contractor will be required to execute the standard form of Contract in one (1) original counterpart within ten (10) calendar days after formal Notice of Award of Contract. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within 10 (ten) calendar days after the date of Notice of Award shall be just cause for the cancellation of the Award.

B. JOC CONTRACTOR INSURANCE AND BOND RATING REQUIREMENTS

Personal or individual bonds are not acceptable.

Bonding companies and Liability and Excess insurance carriers shall be "Best Rated A-VII" or better as currently listed in the most recent "Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company. This requirement does not apply to the Worker's Compensation/Employers Liability portion on the Certificate of Insurance.

Each such bond SHALL be executed by a surety company or companies duly licensed to do business in the State of Arizona. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this

State and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

C. INSURANCE REQUIREMENTS

The JOC Contractor's attention is directed to Contractor's Insurance, MAG Specification 103.6. The insurance policies required by MAG Specification 103.6 shall additionally provide full coverage of indemnity to the City, including an increase in the minimum limits to $5,000,000 combined single limit coverage for General Liability. Prior to execution of the contract, the JOC Contractor shall furnish the City with a Certificate of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify the Project Number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination. The Cancellation Clause shall not include the phrases "endeavor to" or "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." When the project includes construction of a new building addition to an existing building, Builders Risk Insurance shall be provided for the full amount of the contract, in accordance with MAG Specification 103.6C.

D. HEALTH INSURANCE REQUIREMENTS

All JOC Contractors who enter into a contract in excess of $30,000.00 with the City of Tempe must certify that they have, and all of its major subcontractors will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-2). Major subcontractors are defined as entities doing work in excess of $30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all contractor and major subcontractor employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department.

If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the contract.

All Contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at its office and at the job site. Signs for posting will be provided by the City at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

E. BONDS REQUIRED

Prior to execution of each individual Job Order, the JOC Contractor shall provide a performance bond and a payment bond, each in an amount equal to the full amount of the agreed upon Price for that Job Order.

These bonds shall meet the requirements of Arizona Revised Statutes Title 34, Chapter 6, as amended:

1. Performance bond, one hundred percent (100%) of the Job Order Price.
2. Payment bond, one hundred percent (100%) of the Job Order Price.

F. INDEMNIFICATION

To the fullest extent permitted by law, the JOC Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the JOC Contractor, its agents, employees, or any tier of JOC Contractor's subcontractors in the performance of this Contract.

JOC Contractor's duty to defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by JOC Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the JOC Contractor, any tier of JOC Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the JOC Contractor may be legally liable.

The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

III. JOB ORDER SCOPE OF WORK

A. DESCRIPTION OF WORK

The proposed work will be defined by each Job Order. Job Orders shall be in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with Job Order Contractor's name;
b. Job Order number and date;
c. The agreed Work and applicable technical specifications and drawings;
d. The agreed period of performance and, if required by Owner, a work schedule;
e. The place of performance;
f. The agreed total price for the Work to be performed;
g. Submittal requirements;
h. Owner's authorized representative who will accept the completed Work;
i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
j. Such other information as may be necessary to perform the Work.

B. PRE-CONSTRUCTION CONFERENCE

After completion of Job Order prior to the commencement of any Work on any Job Order, a pre-construction conference will be scheduled.

The purpose of this conference is to establish a working relationship between the JOC Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

Minimum attendance by the JOC Contractor shall be a responsible company/corporate official who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the JOC Contractor's safety officer.

The Job Order Notice to Proceed date will be established.

C. TRAFFIC CONTROL

All traffic shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions, available through the City of Tempe Transportation Division (Transportation) at 480-350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

At the time of the pre-construction conference, the JOC Contractor shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

The JOC Contractor shall have the full responsibility and liability for traffic control for this project. The JOC Contractor shall submit a Traffic Control Plan to Transportation for approval one week prior to beginning work under this contract. It shall be noted that Traffic under this contract shall include all motor vehicles, bicyclists, and pedestrians.

During construction it may be necessary to alter traffic control as approved by Transportation. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the ADOT Traffic Control Manual; or the City of Phoenix Barricade Manual, latest edition, with revisions as adopted by the City of Tempe. The most restrictive manual shall apply. No measurement will be made for traffic control. No payment will be made for traffic control. The cost thereof shall be included in the price bid for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any revisions shall be submitted to Transportation for review and approval.

In the event the JOC Contractor damages any traffic signal equipment, traffic signal conduit, and/or circuits, it shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to the JOC Contractor at twice the City's cost.

The JOC Contractor shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Transportation.

Speed limits shall be strictly enforced.

For more information, please contact the City of Tempe Transportation Division at (480) 350-8219.

D. CLEAN-UP

The JOC Contractor shall, upon completion of the Work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

E. ALTERATION OF WORK

In the event that significant changes in the scope of the work, and/or changes in the quantities due to contingencies of construction becomes necessary, such changes shall be made in accordance with Section 104.2 of General Conditions in the MAG Specifications.

The costs associated with any extra work as authorized by the contracting agency must be approved prior to the start of work. Extra work performed on an actual cost basis shall be submitted for approval within twenty-one (21) days after the qcompletion of such work. The final costs for additional work shall also include any and all charges associated with extended general conditions or contract acceleration.

F. SUBSIDIARY WORK

All work called for in the Plans and Specifications shall be performed by the JOC Contractor and unless a specific bid item is provided for the work, then such portion of the work will be considered subsidiary to other work for which payment is provided.

IV. CONTROL OF WORK

A. INTERPRETATIONS OF DRAWING AND DOCUMENTS

If any JOC Contractor submitting a Job Order Proposal for the proposed Work or any part thereof is in doubt as to the true meaning of part of the Contract Documents, or finds discrepancies in or omissions from the Contract Documents, such JOC Contractor may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC Contractor submitting the request will be responsible for its prompt delivery. Any interpretations or corrections of the proposed documents will be made by Addendum duly issued, and a copy of each addendum will be mailed or

delivered to the JOC Contractor who shall distribute the addendum to the appropriate Subcontractor(s). The City of Tempe will not be responsible for any other explanation or interpretations of the documents.

B. JOC CONTRACTOR'S REPRESENTATIVE

The JOC Contractor shall at all times be present at the work in person or represented by a foreman or other properly designated agent. Instructions and information given by the Engineer to the JOC Contractor's foreman or agent on the Work shall be considered as having been given to the JOC Contractor.

C. RELOCATION OF UTILITIES

All utilities in conflict with the new Work will be relocated by the City except as otherwise provided in the Plans and Specifications,

D. SUPERVISION BY JOC CONTRACTOR

The JOC Contractor will supervise and direct the work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the JOC Contractor as the JOC Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the JOC Contractor and all communications given to the supervisor shall be as binding as if given to the JOC Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

Nothing contained in this Contract shall be construed as establishing an employer/employee relationship, partnership or joint venture between the JOC Contractor and the City.

E. CONSTRUCTION STAKING

Construction staking will be provided by the JOC Contractor. Replacement of construction stakes that have been knocked out due to JOC Contractor's work or lack of work, weather conditions, traffic, or vandalism will be at the JOC Contractor's expense.

F. SURVEY CONTROL POINTS

Existing survey monuments shall be protected by the JOC Contractor or removed and replaced under the direct supervision of the City Surveyor or the City Surveyor's authorized representatives.

Prior to construction, it is the responsibility of the JOC Contractor to notify the City Surveyor of any survey monuments which need to be referenced off of the monument.

Any monuments which are lost and have not been referenced off due to the JOC Contractor's negligence and/or lack of notification to the City Surveyor shall be replaced at the JOC Contractor's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

G. AUTHORITY OF THE CONSTRUCTION MANAGER PROFESSIONAL

The Construction Manager Professional shall act as the City Engineer's designated representative during the construction period. Construction Manager Professional shall advise on questions concerning coordination with the City of Tempe, public safety, and quality and acceptability of materials and work performed. The Construction Manager Professional or the Construction Manager Professional's assigned inspector shall interpret the intent of the Contract Documents in an unbiased manner.

The Construction Manager Professional or Construction Manager Professional's assigned inspector shall be present on the site at times during construction to monitor the work and to maintain records for contract management. The Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract Documents so as to minimize delays in construction. The Construction Manager Professional will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

H. SHOP DRAWINGS, SCHEDULES & SAMPLES

In time for each to serve its proper purpose and function, the JOC Contractor shall submit to the Engineer such schedules, reports, drawings, lists, literature samples, instruction, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

Shop drawings and data shall be submitted to the Engineer in such number of copies as will allow him to retain four (4) copies of each submittal.

The submittal shall clearly indicate the specific area of the Contract Documents for which the submittal is made. The additional copies received by him will be returned to the JOC Contractor's representative at the job site. The Engineer's notations of the action which he has taken will be noted on one (1) of these returned copies.

The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the jobsite Contract Documents, and the fabrications furnished shall be in conformance with the same.

However, the Engineer's review of the above drawings, lists, prints, specifications, samples, or other data shall not release the JOC Contractor from its

responsibility for the proper fulfillment of the requirements of this Contract nor for fulfilling the purpose of the installation nor from its liability to replace the same, should it prove defective or fail to meet the specified requirements.

I. AS-BUILT PLANS

The JOC Contractor shall provide and maintain accurate field data on a red-lined set of contract Plans, which are to be kept current and submitted as complete at the conclusion of the construction. These record Plans will be used as documentation for progress payments, and upon project completion, for the preparation of 'as-built' file Plans by the architect/engineer. All 'as-built' information shall be on 3 ml double matte black line mylar and shall be 24" x 36" in size. Final payment will not be issued until all record Plans and as-built information are submitted by the JOC Contractor, and certified to be complete by the architect/engineer of record.

J. UNDERGROUND UTILITIES

Underground utilities indicated on the Plans are in accordance with maps furnished by the City of Tempe and by each utility company. The locations are only approximate and require verification prior to construction as mandated by City of Tempe requirements for underground street crossings and potholing.

K. INSPECTION

The JOC Contractor is responsible for complying with the Specifications and is hereby forewarned that final approval of any work will not be given until the entire project is completed and accepted. Prior to "final inspection" on any City facilities requiring a Building Permit, the JOC Contractor must call for final inspections from the Development Services and Public Works Departments of the City of Tempe. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

L. SUBSTANTIAL COMPLETION

Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC Contractor all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in a certificate of Substantial Completion.

M. BENEFICIAL OCCUPANCY

"Beneficial occupancy" is use of a facility or project, in whole or in part, by the owner for its intended purpose. This may occur even though some work of the contract remains undone.

Prior to such use or occupancy, the owner will prepare a written contract with the JOC Contractor and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

N. COMPLETION OF THE WORK

Completion of the Work is full completion of all construction associated with a contract, including, but not limited to punch list items, close out documentation, Operation and Maintenance manuals, warranties, and record Plans as certified by the Architect or Engineer of record. The JOC Contractor may be found in default of contract in accordance with MAG Specification 108.10, should project completion fall behind substantial completion by more than forty-five (45) days.

O. FINAL ACCEPTANCE & GUARANTEE

"Final Acceptance" shall mean a written final acceptance of the Work. The City Engineer shall make the final acceptance promptly after the work has been completed in accordance with the Contract Documents and after inspection is made. The work performed under this contract shall be guaranteed for a period of one year from the date of final acceptance.

V. CONTROL OF MATERIALS

A. EXCESS MATERIALS

Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC Contractor. The JOC Contractor shall, prior to commencement of the work, submit a letter to the City Engineer stating the location of disposal site(s) for all excess material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

B. QUALITY CONTROL

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Contract Documents; and it shall be the duty of the JOC Contractor to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the work.

The Engineer may, by appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon the JOC Contractor as though contained in the original Contract Documents.

At the option of the Engineer, materials to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the work. The JOC Contractor shall give the Engineer written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin.

Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the work.

VI. LEGAL REGULATIONS AND RESPONSIBILITIES TO PUBLIC

A. CONFLICT OF INTEREST

This contract is subject to cancellation under the provisions of ARS §38-511.

B. EMERGENCIES

In any emergency affecting the safety of persons and/or property, JOC Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The MAG Specification 107.5 applies to this provision.

C. NON-DISCRIMINATION

In connection with the performance of work under this Contract, the JOC Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or disability. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The JOC Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of the Non-Discrimination clause.

D. HAUL PERMIT

In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, the JOC Contractor will obtain a Maricopa County Earth Moving Permit as required under Rule 200 of the Maricopa County Division of Air Pollution Control Requirements. This permit will require that a Control Plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. The Control Plan should be submitted to the City of Tempe for review prior to County submittal to ensure that all elements of the planned operation are covered. Please contact the Maricopa County Division of Air Pollution Control at 602-506-6700 for additional details.

In addition, all Contractors hauling fill or excavation materials, where the haul exceeds five thousand (5,000) cubic yards or when the duration of the haul is more than ten (10) working days, are required to obtain a City of Tempe haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC Contractor must submit the required certificate of insurance, a plan showing the proposed haul routes and a complete schedule of the hauling operation to the City of Tempe Transportation Division. Prior to submittal, the JOC Contractor should contact Engineering Services for complete details for issuance of the City of Tempe haul permit.

E. ENVIRONMENTAL REQUIREMENTS

The JOC Contractor shall comply with all Federal, State, and Municipal regulations, laws, and policies relating to air, ground water quality, and water conservation. In addition, the following requirements are applicable for City construction projects.

Non-pick up sweepers will not be allowed except as required to make joints during chip sealing operations.

Water flooding of trenches with potable water will not be permitted.

All paints applied by sprayers shall be of a water-based type.

Provisions shall be made to prevent the discharge of construction silt, mud, and debris into City storm drains or streets.

Spills of oil, gas, chemical, or any other hazardous materials must be reported and removed by approved procedures. Mitigation measures shall be taken to prevent contamination of construction storage sites.

Concrete waste must be disposed of in an approved location and at least twenty-five (25) feet from established landscaping.

City of Tempe refuse roll-off containers shall be used on City projects. Please contact Steve Fraijo, Sanitation Supervisor, at 480-350-8268 with any questions.

Hazardous wastes shall not be discharged into the City's sanitary sewers or storm drainage system. All waste products shall be disposed of in accordance with applicable regulations.

The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume in the identified area until approved by the Engineer.

All materials supplied by the JOC Contractor shall be 100% asbestos free unless otherwise approved by the City of Tempe.

No additional payment will be made for compliance with the above items.

In addition to the above, the use of new products made with reclaimed material and meeting project Specifications are encouraged.

F. SAFETY REQUIREMENTS

The JOC Contractor shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements. In addition, the following requirements are applicable for City of Tempe construction projects.

CONTRACT REQUIREMENTS

The JOC Contractor will be required to attend a City safety briefing. The safety briefing session shall address the following issues:

a. City Safety Rules and Expectations.
b. Contractor Tailgates – JOC Contractor shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
c. Accident/Injury/Illness Procedures – The City's Construction Manager and the Risk Management Division shall be contacted any time an accident, injury or illness occurs on the project.
d. Unsafe Acts – Contractor employees shall be empowered to stop an unsafe act or condition at City facilities.
e. Safety Audits – The City reserves the right to conduct safety audits at the job site at any time. In addition, the City shall be notified should an OSHA inspection occur at a City job site.
f. Job and Site Specific Requirements – Site specific requirements such as lockout/tagout rules and evacuation plans shall be covered during the safety briefing as indicated by the project exposures.

The JOC Contractor may have the following additional safety requirements based on the exposures of the project:

The JOC Contractor shall implement a permit-required confined space program as required under federal and state statutes and/or regulations, and amendments thereto, for all work that encompasses a space that 1) is large enough and so configured that an employee can bodily enter and perform assigned work; 2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and 3) is not designed for continuous employee occupancy.

As a part of the JOC Contractor implementing a confined space program, it is the responsibility of the JOC Contractor to provide trained attendant(s) and all intrinsically safe confined space entry related equipment (example: ladders, gas detectors, safety harnesses, safety tripods, and electrical devices) as needed for safe entry of a confined space.

When any City employee is required to enter a confined space during the construction phase of a project, such as for the purpose of inspection, it is the responsibility of the JOC Contractor to provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be a part of the agenda for the weekly construction meetings. Items of discussion will be outstanding safety and health issues, current safety meeting topics, environmental issues and any accidents or injuries on the job. The City reserves the right to request the agendas, minutes of the meetings, and documentation of any safety tailgate meetings held on the job site.

G. TEMPORARY BARRICADES

Temporary barricades shall be regulated in accordance with the City of Phoenix Traffic Control and Barricade Manual, latest edition, with City of Tempe revisions available through the City of Tempe Transportation Division at (480) 350-8219.

No additional payment will be made for temporary barricades. Temporary barricades will be considered subsidiary items to those items for which payment is made.

H. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

The JOC Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until that phase is completed and accepted by the City Engineer.

Estimate or partial payment of work so completed shall not release the JOC Contractor from such responsibility but he shall turn over the entire work in full accordance with these Specifications before final payment can be made.

I. BLUE STAKE

The JOC Contractor is required to notify Blue Stake (602-263-1100) prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21 through 40-360.32, as amended. The JOC Contractor shall directly contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

J. SALT RIVER PROJECT CONSTRUCTION CLEARANCE AGREEMENT

Salt River Project requires all contractors who will be working on its facilities to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. This agreement sets forth the requirements to complete the proposed work in an allotted time frame or to pay full costs for others to complete. It also obligates the contractor to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, the OSHA Permit Required Confined Space rules, as amended. The JOC Contractor is responsible for executing a "Construction Clearance Agreement" with Salt River Project, if required, and furnishing a copy to the City of Tempe prior to proceeding with any construction on Salt River Project facilities.

K. NOTIFICATION OF PROPERTY OWNERS

All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by the JOC Contractor prior to start of construction.

L. ACCESS

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. If only one driveway exists, then access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained during all non-working hours.

M. PROTECTION OF EXISTING FACILITIES

The JOC Contractor is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by the JOC Contractor. The JOC Contractor shall notify the appropriate Utility Company or agency of any construction that may affect its facilities and state the course of action which will be taken to protect same.

N. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT

Any project that disturbs more than one (1) acre is subject to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. Under provisions of that permit, the JOC Contractor shall be designated as permittee, and shall be responsible for providing necessary material and taking appropriate measures to assure that all discharges authorized by the General Permit shall be consistent with the terms and conditions of the General Permit. The AZPDES Construction General Permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from www.adeq.state.az.us/environ/water/permits/links.html or viewed at the City of Tempe Engineering Division.

The JOC Contractor shall complete and submit the following for any Job Order that qualifies for this provision:

1. **Notice of Intent (NOI) for Coverage** under AZPDES Permit No. AZG2003-001 for Construction Activity Discharges to Waters of the United States, including certification of the signature.

2. **Storm Water Pollution Prevention Plan (SWPPP)** for the project.

3. **Notice of Termination (NOT)** of coverage under the AZPDES Construction General Permit.

All subcontractors shall comply with all requirements of the AZPDES Construction General Permit and the project SWPPP. The SWPPP shall be kept on the project site at all times, and shall be retained by the permittee for three (3) years following project completion.

The JOC Contractor shall submit completed and signed NOI forms **PRIOR TO NOTICE TO PROCEED** to the following address: **Stormwater Program – Water Permits Section/ NOI**, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix 5415B-3, Arizona 85007. Copies shall be transmitted to the City's construction project manager at the time of the preconstruction meeting. The JOC Contractor shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the contractor (or any of its appropriate subcontractors) to submit the NOI forms within this time frame (or to promptly make revisions to those forms as requested by the City) which prevents **submittal** of the forms to the Arizona Department of Environmental Quality within the mandated deadline of forty-eight (48) hours prior to start of construction will result in delay of the start of construction. The contractor will not be entitled to any claim for additional compensation for additional costs resulting from such a delay in the construction start date. The NOI shall be posted on the construction site along with the SWPPP.

It is the permittee's responsibility to perform inspections of all storm water pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The contractor is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

All SWPPP reports required under this contract shall be available to the public in accordance with the requirements of the AZPDES Construction General Permit No. AZG2003-001. The JOC Contractor, as the permittee of construction activities with storm water discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality.

No condition of the AZPDES Construction General Permit as well as the SWPPP shall release the contractor from any responsibilities or requirements under other environmental statutes or regulations.

Upon total project completion, acceptance, and de-mobilization, the contractor shall submit its completed, signed Notice of Termination (NOT) form to **Stormwater Program – Water Permits Section/ NOT**, Arizona Department of Environmental Quality, 1110 West Washington 5415B-3, Phoenix, Arizona 85007 with a copy to the City's construction project manager thereby terminating all AZPDES Construction General Permit coverage for the project.

The unit prices for the proposal items shall include all material, labor, and other incidental costs relating to the preparation and submittal of all AZPDES Construction General Permit related forms to Arizona Department of Environmental Quality; preparation, revision and maintenance of the SWPPP; and provision, installation, operation, and maintenance of all pollution control devices. The cost of the activities and items within this provision as provided by the contractor is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include contractor costs in order to assure proper operation of the pollution control devices installed, including all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events or other runoff or releases on the project.

VII. COMMENCEMENT, PROSECUTION AND PROGRESS

A. START OF WORK

Work shall start as soon as practical, and in no case later than seven (7) calendar days after the Notice to Proceed for each Job Order and shall be completed within the agreed upon Job Order Time.

B. CONTRACT COMPLETION DATE

The date established in the Job Order Notice to Proceed is for completion of all or specified portions of the Work. This includes items of Work to be completed under an owner allowance or as part of a contingency item. The stated contract completion date will include weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or a number of calendar days after issuance of the Notice to Proceed.

C. JOC CONTRACTOR'S CONSTRUCTION SCHEDULE

Prior to the start of work, a construction progress schedule shall be required for all projects and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

D. HINDRANCES AND DELAYS

1. Except as provided in Paragraph 2 immediately below, no charge shall be made by the JOC Contractor for hindrances or delays from any cause during the progress of any portion of the work embraced in this contract; but such delays, if due to no fault or neglect of the JOC Contractor, shall entitle the JOC Contractor to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Engineer provided the JOC Contractor gives the Engineer immediate notice in writing of the cause of such delay.

2. The parties agree to negotiate for the recovery of damages related to expenses incurred by the JOC Contractor for a delay under the following circumstances:

   a. If the City is solely responsible for the delay which is unreasonable under the circumstances, and

   b. Which delay was not within the contemplation of the parties to the contract at the time the contract was entered into, and

   c. The JOC Contractor can show the impact of the delay on the critical path of the construction activity as indicated in an approved Construction Progress Management schedule.

3. Unless specifically provided for in the Special Provisions, the maximum compensation for an unreasonable or unforeseen delay shall not exceed the daily amount specified for liquidated damages in MAG Specification 108.9 as based on the original contract amount.

4. This section shall not be construed to void any provisions of this contract, which require notice of delays, which provide for alternative dispute resolution or other procedures for settlement, or which provide for liquidated damages.

E. LIQUIDATED DAMAGES

Unless otherwise specified, liquidated damages will be applied in accordance with the MAG Specification 108.9. Completion of the Work as stated in this Contract is the same as completion of the work as stated in MAG Specification 108.9. Damages will be applied at the amounts specified in Table 108.1.

F. NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract will not be construed as a waiver of such provisions nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each and every provision.

G. JURISDICTION

This contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof.
An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

H. SURVIVAL

All warranties, representations and indemnifications by the JOC Contractor will survive the completion or termination of this Contract.

I. MODIFICATION

No supplement, modification or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract except as expressly provided herein to the contrary.

J. SEVERABILITY

If any provision of this contract or the application thereof to any person or circumstance is held invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

K. INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

L. TIME IS OF THE ESSENCE

Time of each of the terms, covenants and conditions of this Contract is hereby expressly made of the essence.

M. THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the JOC Contractor. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC Contractor and not for the benefit of any other party.

N. COOPERATION AND FURTHER DOCUMENTATION

The JOC Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

O. GUARANTEE AND WARRANTY

The guarantee and warranty period per MAG Specification 108.8 for each individual Job Order starts with the Final Acceptance of the Job Order Work.

VIII. MEASUREMENTS AND PAYMENTS

A. CONTRACT PRICE ADJUSTMENTS

The increase or decrease in Contract Price resulting from a change in the City requested change in Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Job Order or as subsequently agreed to between the parties;

2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and

3. Costs, fees and any other markups.

The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved Job Order.

If an increase or decrease cannot be agreed to as set forth in items 1 through 3, above, and the City issues a Change Order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract. JOC Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to the City or the JOC Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

If the City and the JOC Contractor disagree upon whether the JOC Contractor is entitled to be paid for any services required by the City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, the City and the JOC Contractor shall resolve the disagreement pursuant to MAG Specification 110.

As part of the negotiation process, JOC Contractor shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

If the parties are unable to agree and City expects the JOC Contractor to perform the services in accordance with City's interpretations, JOC Contractor shall proceed to perform the disputed services, conditioned upon City issuing a written order to JOC Contractor (i) directing JOC Contractor to proceed and (ii) specifying City's interpretation of the services that are to be performed.

B. RECORD KEEPING AND FINANCE CONTROLS

Records of the JOC Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC Contractor shall be kept on a generally accepted accounting basis.

The City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit the JOC Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if, upon audit of the JOC Contractor's records, the audit discloses the JOC Contractor has provided false, misleading, or inaccurate cost and pricing data.

The JOC Contractor shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has/have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

The City reserves the right to decrease Contract Price and/or payments made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit it's records to verify the accuracy and appropriateness of pricing data.

C. MISCELLANEOUS REMOVAL AND RELOCATIONS

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the Plans and Specifications, and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, and other comparable items of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, and are included in this category.

D. APPROXIMATE QUANTITIES

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the work under this

E. RETENTION

The Owner has elected to require five percent (5%) retention for each Job Order pursuant to A.R.S. §34-607 (B)(7). This retention requirement may be waived by the Owner.

SECTION 6. SPECIAL PROVISIONS

I. KEY CONTACTS

City of Tempe Engineering (Project Manager)	Larry Fosholt	480-350-2922
City of Tempe Redevelopment/Special Projects	Tim Jones	480-350-8711
City of Tempe Engineering		480-350-8200
Blue Stake		602-263-1100

II. UNIFORMED POLICE OFFICERS

During the course of construction, it may be required to have a uniformed police officer present to facilitate traffic control per the Tempe Barricade Manual and the Traffic Engineer's direction. Uniformed police officers will be paid for by the City.

III. OPEN TRENCHING AND STEEL PLATES

The maximum amount of open trench in any state of trenching or backfilling shall be limited to five hundred feet (500'). All trenches shall be completely backfilled or covered using steel plates at the end of each working day.

The use of steel plates shall not exceed seventy-two (72) hours between completion of work in trench and final patch. Steel plates are to be installed according to Detail T-450 of the Tempe Supplement to the MAG Details. All steel plates installed will be recessed into the existing pavement by milling until the top of the plate is flush with the top of the pavement.

IV. CONFIDENTIALITY OF PLANS AND SPECIFICATIONS

Any Plans or Specifications the JOC Contractor receives regarding this project are for official use only. The JOC Contractor may not share them with others except as required to fulfill the obligations of its contract with the City.

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the JOC Contractor shall include the following language: "Per City of Tempe Guidelines, these Plans are official use only and may not be shared with others except as required to fulfill the obligations of the JOC Contractor's contract with the City of Tempe".

IV. CONFIDENTIALITY OF PLANS AND SPECIFICATIONS

Any Plans or Specifications the JOC Contractor receives regarding this project are for official use only. The JOC Contractor may not share them with others except as required to fulfill the obligations of its contract with the City.

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the JOC Contractor shall include the following language: "Per City of Tempe Guidelines, these Plans are official use only and may not be shared with others except as required to fulfill the obligations of the JOC Contractor's contract with the City of Tempe".

V. IRRIGATION AND LANDSCAPE REPAIR

The Contractor shall repair all sprinkler and irrigation systems that are disturbed in the course of the work. There will be no separate payment for irrigation and landscape repair, the cost of which will be incidental to other bid items. It is highly recommended that the Contractor meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

VI. SEQUENCE OF CONSTRUCTION

The Contractor shall submit a project sequencing schedule to the City Engineer for review at the pre-construction conference. The Contractor is on notice that the City will review the proposed schedule to insure limited community impact.

VII. COORDINATION WITH OTHER CONTRACTORS

Coordination between contractors may be required. Should the JOC Contractor cause damage to the work or property of any separate contractor at the site, or should any claim arising out of or resulting from the JOC Contractor's performance of the work at the site be made by any separate contractor against the JOC Contractor, Design Engineer, or Construction Manager or any other person, JOC Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC Contractor shall, to the fullest extent permitted by Laws and Regulations, defend, indemnify and hold Owner, its officers, officials, employees and volunteers harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of or resulting from any action, legal or equitable, brought by a separate contractor against Owner, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC Contractor's performance of the work.

Should a separate contractor cause damage to the work or property of JOC Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, JOC Contractor shall not institute any action, legal or equitable against Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from Owner, Design Engineer, or Construction Manager or the officers, directors, employees, or other consultants of each and any of them on account of such damage or claim.

If JOC Contractor is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and Owner and JOC Contractor are unable to agree as to the extent of any adjustment in Completion Time attributed thereto, JOC Contractor may make a claim for an extension of time. An extension of the Completion Time shall be JOC Contractor's exclusive remedy with respect to Owner, Design Engineer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them for activities that are its respective responsibilities.

Cooperation between contractors shall be in accordance with MAG Specification 105.7.

VIII. PARTNERING

The foundation and development of a partnering relationship with the JOC Contractor is a goal of the Owner, the Engineer, and the City Construction Manager. This relationship is ideally based on understanding and acceptance of the differing roles and objectives of each party while cooperating on common goals.

Partnering objectives include efficient and effective contract performance, prompt conflict resolution, completion of contract work within budget, on schedule and in accordance with the Plans and Specifications. The guiding principles of the partnering process will be the improvement of working relationships, the improvement of the quality of construction, and improved business practices.

The City will determine if a Partnering workshop is required for a Job Order. If so determined, the Construction Manager will conduct an initial formal partnering workshop with city staff members, the design team, the general contractor and key subcontractors. This will be scheduled between the award of the Contract and the Notice to Proceed with the purpose of establishing a positive atmosphere of cooperation between all the members of the project team.

Role and expectations of all attendees will be discussed and goals agreed upon. This will be reinforced with additional meetings at the 50% and 90% completion stage. General partnering discussions will be part of each weekly meeting.

A fundamental aspect of partnering and a key goal of the development of the partnering relationship is dispute resolution in a timely, professional and non adversarial manner.

In the event that the Owner determines, in its sole discretion, that a dispute cannot be resolved by this partnering process, the City Engineer shall notify the Neutral Evaluator and all disputes shall be resolved pursuant to MAG Specification 110.

Payment for partnering facilities and salary cost of the facilitator shall be paid by the Owner. Owner shall bear other incidental costs related to the preparation and distribution of written materials both in preparation of and forthcoming from partnering sessions. JOC Contractor shall pay the cost of lunch meals for those individuals in attendance at partnering sessions. Salary costs of all JOC Contractor personnel shall be paid by the respective participating JOC Contractor.

Owner shall make all arrangements for the meeting room and facilities necessary to conduct the partnering session and shall select the facilitator.

The JOC Contractor and Owner shall submit to the partnering process set forth herein for any dispute which arises from the interpretation of the Contract Documents or directions given under this Contract within five (5) days of when the dispute is or should have been discovered by either party.

IX. DEMOLITION SERVICES FOR COMMERCIAL AND RESIDENTIAL PROPERTIES

Under clarification issued by the Environmental Protection Agency (EPA) on July 28, 1995, (FR 38725,26) demolition by municipalities of isolated commercial and residential buildings for purposes of nuisance abatement are exempt from National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations. The JOC Contractor shall obtain an 'Earth Moving Permit' from Maricopa County, Environmental Services Department, Air Quality Division (602) 506-6727, for general building demolition and site clearing activities on parcels over 0.10 acre.

The JOC Contractor shall be responsible for the removal of all hazardous and regulated materials from the site of the work.

The following standard specifications shall apply to all demolition work:

Part 1 – General

1.1. Work Included – Furnish all labor, materials, equipment, transportation, technician expertise, record keeping and services necessary for general demolition, hazardous materials removal and disposal, and site clearing such that the property shall be left in safe condition free from nuisance and hazard. "Hazardous materials" means those materials designated by Tempe as requiring special management during transport, storage, treatment, and/or disposal. This includes, but is not limited to: hazardous waste, polychlorinated biphenyls (PCB's); asbestos; and Special Wastes as designated by the State of Arizona.

Hazardous waste is clarified as a hazardous material, which meets the established criteria of the Resource Conservation and Recovery Act (RCRA) regulations.

1.2. Quality Assurance – The Tempe Building Code consists of the International Building Code (I.B.C.), 2003 Edition, and the City of Tempe amendments to the 2003 I.B.C. and shall govern the work of this agreement. The JOC Contractor shall obtain a Haul Permit from the City's Public Works Department, a Demolition Permit from the City's Development Services Department, an Air Quality Permit from Maricopa County Health Services Department, and all other applicable permits prior to commencing work. An asbestos NESHAP is required for the work of this contract under the "Residential Building Exemption". The JOC Contractor shall comply with the EPA's revised asbestos NESHAP regulations for all Category I and Category II materials (friable and non-friable asbestos containing materials (ACM)). The JOC Contractor shall treat, transport and dispose of all hazardous materials received pursuant to this contract in an environmentally sound manner and in compliance with all applicable local, state and federal laws and regulations. The JOC Contractor shall dispose of all hazardous materials at an EPA approved landfill.

1.3. Site Conditions – The City's Water Utilities Department Environmental Division will investigate the site and identify, but not remove, all known hazardous or regulated materials. The JOC Contractor shall remove all hazardous or regulated materials identified by the City and any additional discovered. The JOC Contractor shall not close or obstruct roadways, driveways, sidewalks, or hydrants without proper permits from the City's Public Works Department.

1.4. Scheduling/Sequencing – The JOC Contractor shall coordinate the work with utility companies having facilities on-site. The City will make arrangements for electrical, gas, and water services to be disconnected prior to removal of hazardous or regulated materials. As demolition is normally scheduled to occur as soon as possible after completion of removal operations, the JOC Contractor shall verify satisfactory utility conditions prior to commencing operations, which might jeopardize facilities.

Part 2 – Products

2.1. Materials Salvage – The JOC Contractor is encouraged to salvage and recycle glass, aluminum, copper, etc. as well as any serviceable doors, fixtures, lights, trees, shrubs, etc. Salvageable items are the property of the JOC Contractor and must be removed from the property within the time period of the contract. Historic artifacts such as cornerstones and their contents, commemorative plaques and tablets, as well as other articles of historic significance remain the property of the City. Notify the City if such articles are encountered and obtain direction for appropriate method of removal and disposition.

2.2. Fill Materials – Native or imported fill materials shall conform to the requirements identified below.

Part 3 – Execution

3.1. Inspection – Prior to the start of demolition work, the JOC Contractor shall inspect areas in which work will be performed. Photograph existing conditions of structures and surfaces and surrounding properties, which could be misconstrued

as damage resulting from demolition work; file photographs with the City prior to starting demolition.

3.2. Preparation – The JOC Contractor shall notify Blue Stake and coordinate locating of underground facilities. The JOC Contractor shall not carry on any function, work, or operation in closer proximity to any high-voltage overhead power line than is permitted by A.R.S. §40-360.42 et seq. without first notifying the utility owner.

3.3. Demolition – The JOC Contractor shall perform demolition of electrical utilities in accordance with power and telephone company requirements. Disconnect, remove, abandon, and identify designated utilities within demolition areas.

A. Remove foundation walls and footings to a depth of 12 inches below grade.

B. Remove slabs-on-grade. Decision to remove slabs will be made on a project basis.

C. Remove all incidental-landscaping materials, any landscaping in poor condition, or in conflict with general demolition and site clearing operations. Remove all stumps and dead landscaping elements. Remove all trees of caliper less than six-(6) inches.

D. Remove all demolition materials from site. Remove all debris and demolished landscaping materials from site. Do not burn or bury materials on site.

E. Backfill areas excavated, open pits, holes, and areas where standing water may accumulate. Fill materials required to raise an area shall be placed in six-(6) inch lifts, moistened, and compacted such that the required densities are obtained throughout the lift.

F. Compact soils to 90 percent maximum density in accordance with the American Society for Testing and Materials (ASTM) D698. Granular and imported soils shall be compacted as moisture content of optimum to optimum minus 3 percent. Clay or on site soils shall be compacted at a moisture content of optimum to optimum plus 3 percent.

G. Exposed loose soils shall be scarified, moistened, and compacted to a minimum depth of eight (8) inches. Clay soils shall be compacted only to recommended densities and shall not be over-compacted. Sewer caps shall be installed by the JOC Contractor.

H. The site will be brought to rough grade under this contract. Rough grade and compact areas affected by demolition to maintain site grades and contours. Areas to be rough graded shall extend to the limits of the property.

3.4. Field Quality Control – The JOC Contractor shall provide water and equipment for dust control.

3.5. Protection - Protect existing landscaping materials scheduled to remain. Prevent movement or settlement of adjacent structures. Provide bracing or shoring as necessary. Conduct operations with minimum interference with public or private access. Obtain written permission from adjacent property owners when equipment will traverse, infringe upon, or limit access to their property.

3.6. Schedules - Fill Materials - Native or imported fill materials shall conform to the following requirements:

Graduation (ASTM C136) Percent passing by weight Sieve Size	Imported Fill	Aggregate Base Course
6"	100	---
1-1/2"	---	100
No. 4	---	45-90
No. 200	50 max.	12 max.
Minimum Plasticity Index (ASTM D423 & D424)	10	---
Maximum Expansion Potential [1]	1.5%	---
Max Percent Soluble Sulfates	0.10	0.10
[1]Expansion measured upon remolded sample compacted to 95% of the maximum dry density as determined in accordance with ASTM D698 at a moisture content approximately 2% below optimum.		

3.7. Cleaning – The JOC Contractor shall maintain the right-of-way and keep it clean continuously throughout demolition operations. Upon completion of demolition, remove temporary work. Repair adjacent surfaces soiled or damaged by demolition work. Leave project area clean.

3.8. Attachment - Plot plan sketch on 8½ x 11 inch paper for submittal to Maricopa County, Environmental Services Department, Field Services Division, Air Pollution Control as required for Application for Earth Moving Permit, Demolition & Dust Control Plan. An 81/2 x 11 inch plot plan sketch shall also be submitted with the Demolition Permit to the City's Development Services Department.

SECTION 7. FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order to the Contract. **They are included in this Contract only as reference and will also be provided in each Job Order.**

LIST OF SUBCONTRACTORS SB-1

STATUTORY PERFORMANCE BOND B-1

STATUTORY PAYMENT BOND B-3

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS AFF-1

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT REGARDING HEALTH INSURANCE AFF-2

CITY OF TEMPE GUIDELINES FOR IMPLEMENTATION OF HEALTH INSURANCE AFF-3

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications , the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor Name	Address	Type of Work	% of Total Contract

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 6,OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 5406011, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this _____ day of _____, 2008.

_____

PRINCIPAL SEAL

BY:_____

**

_____

SURETY SEAL

BY:_____

_____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto_____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 10th day of January, 2008, to complete Project No. 5406011, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the construction provided for the contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

Witness our hands this _____ day of _____, 2008.

_____
PRINCIPAL SEAL

BY:_____

**
_____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

JOC CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above project.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project against the City of Tempe. The undersigned further agrees to indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2008.

_____
Notary Public

_____
My Commission Expires

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF JOC CONTRACTOR
REGARDING
HEALTH INSURANCE

_____, Arizona

Date_____

DEMOLITION OF COMMERCIAL AND RESIDENTIAL PROPERTY
PROJECT NO. 6704081

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of $30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company:_____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2008.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBCRIBED AND SWORN to before me this _____ day of _____, 2008.

_____
Notary Public

My commission expires:

_____

City of Tempe
Guidelines for Implementation of Health Insurance

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of $30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of $30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.

2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four (24) hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.

3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.

4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.

5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.

6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.

8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

Glenn Kephart, P.E.
Public Works Manager

SIGNATURE PAGE

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereinabove named, on the date and year first herein written.

CITY OF TEMPE
a Municipal Corporation

_____
MAYOR

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/ City Engineer

APPROVED AS TO FORM:

_____
City Attorney

The Job Order Contractor warrants that the person who is signing this Contract on behalf of the Job Order Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

Job Order Contractor:

_____
Name

_____
Title

City of Tempe Transaction Privilege License (Sales Tax) Permit No.

_____

Certified to be a true and exact copy (Corporate Seal)

_____
Karen M. Fillmore, Records Specialist

Witness: If Contractor is an Individual