Staff Summary Report

Tempe

Council Meeting Date: 07/22/08 **Agenda Item Number:** _____

SUBJECT: Award three Job Order contracts with SDB Inc., Caliente Construction, Inc., and ForeSite Design and Construction, Inc., for on-call general construction services.

DOCUMENT NAME: 20080722PWDR13 **ENGINEERING ADMINISTRATION (803-02)**

SUPPORTING DOCS: Yes.

COMMENTS: The amount of each contract shall not exceed $4,000,000 annually and each individual job order shall not exceed $1,000,000.

PREPARED BY: Donna Rygiel, Engineering Contract Administrator (x8520)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (x8814)

FISCAL NOTE: The source of funding will be each corresponding Capital Improvement Project. The amount of each particular job order will be subject to future review and approval by Council.

RECOMMENDATION: Award three job order contracts with SDB, Inc., Caliente Construction, Inc. and ForeSite Design and Construction, Inc. for on-call general construction services.

ADDITIONAL INFO: Job order contracting for construction is based on a selection process set forth in Title 34 of the Arizona Revised Statutes. The City utilizes job order contractors to perform a variety of capital improvement projects. Typical projects completed through job order contracting are building, remodeling, site-work, and other improvements and repairs.

The three job order contracts have a term of one year with a single option to renew for up to two years. During the term of the contract, construction work is ordered by staff via an individual job order which details the job's scope, schedule, and price.

The review committee selected SDB Inc., Caliente Construction, Inc., and ForeSite Design and Construction, Inc. for the short list of qualified firms for job order construction.

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

FOR

GENERAL CONSTRUCTION SERVICES

SDB, Inc.

CITY COUNCILMEMBERS

Mayor – Hugh Hallman

Mark Mitchell	P. Ben Arredondo
Joel Navarro	Onnie Shekerjian
Shana Ellis	Corey Woods

2008

CONTRACT

THIS CONTRACT is made and entered into this 22nd day of July, 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 ("City"), and SDB, Inc., an Arizona corporation, ("JOC").

RECITALS

I. The City intends to have a number of projects ("Project") which will be constructed as Job Orders.

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

NOW THEREFORE, each party, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees as follows:

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.

1.1. **"Addendum"** means a document issued by the City during the bidding period that modifies or supersedes portions of the Contract as to additional specifications, forms or other information.

1.2. **"Alternate Systems Evaluations"** means alternatives for design, means and methods or other scope considerations that are evaluated by the City using value engineering principles for a potential reduction of construction costs of a quality and functional Project per City requirements.

1.3. **"Amendment"** means a written modification of the terms of this Contract signed by an authorized agent of the City.

1.4. **"Award"** means the formal action of the City Council to accept a Contract.

1.5. **"Business Day"** means any calendar day except for Saturdays, Sundays and holidays observed by the City.

1.6. **"Change Order"** means a written agreement entered into after the award of the Job Order that alters or amends the Job Order.

1.7. **"City"** means the City of Tempe, a public body or authority and municipal corporation, with whom the JOC has entered into this Contract and for whom the services are to be provided pursuant to this Contract.

1.8. **"City's Contingency"** means a fund to cover cost growth during the Contract Term used at the sole discretion of the City for anticipated costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen Site conditions.

1.9. **"Construction Fee"** means the JOC's total administrative costs, including home office overhead if any, and profit, whether at the JOC's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are provided in the General Conditions sections of the Contract, construction phase, set forth herein.

1.10. **"Construction Manager Professional"** means 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.

1.11. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by the City and JOC covering the Job Order Construction Services. The Contract collectively represents the entire agreement between the City and the JOC, and which supersedes any prior negotiations, representations or agreements, either written or oral.

1.12. **"Contractor"** means the individual, firm, or corporation, its successors and assigns, that enters into a contract with the City.

1.13. **Contractor's Contingency"** or **"JOC's Contingency"** means a fund to cover non-general conditions cost growth during the Project used subject to City's approval in its sole discretion, generally utilized for costs that result from Project circumstances. The JOC's Contingency or Contractor's Contingency shall not be used for General Conditions Costs.

1.14. **"Contract Price"** means the dollar amount(s) set forth in this Contract for the Contract Term, subject to modification only upon prior written approval by the City.

1.15. **"Contract Services"** means all labor, services, work, materials and other incidentals of the scope of Work required by the Contract to complete a Job Order.

1.16. **"Contract Term"** means the term of this Contract from the Effective Date set forth herein to the completion date or date of termination by the City.

1.17. **"Cost of the Work"** means the direct costs necessarily incurred by the JOC 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's construction fee, general conditions fee, taxes, bonds, or insurance costs.

1.18. **"Cost Model"** means a breakdown of the scope of the Project that is initially developed by the JOC during the conceptual Design Phase and based on information from the Project Team and the JOC's records of similar projects. The model will evolve as the design progresses, be maintained by the JOC throughout the Design Phase and will include any assumptions and clarifications made by the JOC. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The Cost Model is subject to approval by the City in its sole discretion.

1.19. **"Day(s)"** means calendar day(s) unless otherwise expressly stated herein.

1.20. **"Deliverables"** means the Work products prepared by the JOC in performing the scope of Work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC 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.

1.21. **"Design Engineer"** means the person, firm or corporation having a contract with the City to furnish design services for this Project.

1.22. **"Design Engineer's Consultant"** means a person, firm, entity 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.

1.23. **"Design Phase"** means the designated period of time in which Design Services are performed for required features, functions, characteristics, qualities and/or properties for the Project, occurring either sequentially or concurrently with the construction of the Project.

1.24. **"Design Professional"** means a qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order, including but not limited to, architect, engineer and/or landscape architect.

1.25. **"Differing Site Conditions"** means concealed, 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.

1.26. **"Duration of the Work"** means the number of days from a Job Order Notice to Proceed to Substantial Completion.

1.27. **"Effective Date of this Contract"** means 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 parties signs this Contract.

1.28. **"Engineer"** means the City Engineer acting directly or through its duly authorized representative.

1.29. **"Final Acceptance"** means the approval and acceptance by the City of the scope of work set forth herein, following completion of a Job Order by the JOC as prescribed in each Job Order.

1.30. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of the JOC during the construction phase, including but not limited to: 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 or subcontractors; and fees for permits and licenses.

1.31. **"Guaranteed Maximum Price (GMP) Proposals"** means the offer of a proposal detailing the qualifications, assumptions, exclusions, value engineering and any and all other requirements set forth in the scope of Work for the Job Order.

1.32. **"JOC"** means firm or entity selected by the City to provide or procure construction and design services as detailed in this Contract.

1.33. **"JOC Payment Request"** means the form used by the JOC to request progress payments by the City for Work and/or services completed under certain Job Orders in accordance with this Contract. JOC Payment Requests are subject to the City's review and approval, in its sole discretion.

1.34. **"JOC's Representative"** means the person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.35. **"JOC's Senior Representative"** means the highest ranking person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.36. **"Job Order"** means a firm, fixed price, competitively bid, indefinite quantity type Contract designed to accomplish small to medium, multi-traded maintenance, repair and minor new construction projects for the City. The Job Order may include a Job Order Price, Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order may also include plans, technical specifications, special provisions and the JOC's proposal either by reference or inclusion.

1.37. **"Job Order Price"** means the sum of the maximum cost of the Work that can be ordered during the initial term of the Contract, including but not limited to, the construction price of the JOC(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's contingency, if any, pursuant to this Contract. The approved Job Order Price will be made a material provision of this Contract upon execution of the Job Order.

1.38. **"Job Order Time"** means the time from the issuance of a Job Order Notice to Proceed by the City to the City's approval of JOC's Substantial Completion. A Job Order Time shall be incorporated into this Contract upon execution of each Job Order.

1.39. **"Laws and Regulations"** means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all federal, state, and local governmental bodies, agencies, authorities and courts having jurisdiction over the subject Project, Site, and/or any Work pursuant to this Contract.

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

1.41. **"MAG Specifications"** means Maricopa Association of Governments 2008 Uniform Standard Details for Public Works Construction and 2008 Uniform Standard Specifications for Public Works Construction, latest editions, and the City of Tempe Supplement thereto. All Work done under this Contract shall be accomplished in accordance with the MAG Specifications except as specifically modified herein. In the event of any conflict between the Contract and the requirements of the MAG Specifications, the Contract shall prevail.

1.42. **"Miscellaneous Removal and Relocations"** means 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 that may require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, are included in this category.

1.43. **"Notice of Award"** means the written notice by the City to the JOC stating that upon compliance by the JOC with the conditions precedent enumerated therein, within the time specified, the City anticipates the execution of this Contract.

1.44. **"Notice to Proceed"** means written notification from the City to the JOC establishing the date on which performance of the JOC's obligations under this Contract shall begin.

1.45. **"Plans"** means documents setting forth visual representations of the scope, extent and character of the Work to be furnished and performed by the JOC during the construction phase of the Project, and which have been prepared and approved by

the Design Engineer for the City. This definition includes Plans that have reached a sufficient stage of completion as determined by the City, and that have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or bidability 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 specifically excluded from this definition.

1.46. **"Product Data"** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC to illustrate materials or equipment for any portion of the Work.

1.47. **"Project"** means the total design and construction of improvements, or services and/or Work to be performed by the JOC Contractor pursuant to an express fixed-price Job Order.

1.48. **"Project Team"** means a construction services unit consisting of a Design Professional, JOC, the City (Water Utilities Department representatives, design project manager, construction project manager), Construction Manager Professional and other persons who are responsible for making decisions regarding the Project, as approved by the City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by the City.

1.49. **"Record Documents"** means any and all data storage medium(s), including but not limited to, any and all documents, memoranda, minutes, contracts, agreements, accounting data, as-built documents, operations and maintenance manuals, project manuals, and specifications created pursuant to or relating to this Contract. Record Documents shall be kept for a period of five (5) years following the close of each calendar year of the Contract Term and any renewals thereof, and JOC shall keep full and accurate books of account relative to transactions relating to the Contract, in accordance with generally accepted accounting principles.

1.50. **"Samples"** means physical examples of materials, equipment or workmanship representative of a part of the construction phase establishing the standards by which that portion of the construction phase Work will be evaluated.

1.51. **"Shop Drawings"** means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC and submitted by the JOC to the City to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

1.52. **"Site"** means the land, area or premises where the Project Work and Services shall be undertaken and/or completed, or upon which the subject project of a Job Order is located.

1.53. **"Specifications"** means the technical specifications for the construction phase of this Project consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and

administrative details applicable thereto.

1.54. **"Subcontractor or Subconsultant"** means an individual, firm, entity or corporation other than JOC's employees, having a contract with the JOC to undertake to perform a part or portion of the Design Phase services or construction phase Work at the Site for which the JOC is responsible.

1.55. **"Substantial Completion"** means when the Work, or a significant portion of the Work as determined by the City, is sufficiently completed so that the City, in its sole discretion, can occupy and use the Project Site for its intended purposes.

1.56. **"Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC or with any Subcontractor to furnish materials or equipment.

1.57. **"Total Float"** means 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, as determined by the City.

1.58. **"Work"** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction, design and/or repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

2. SCOPE OF THE WORK

2.1. The JOC shall furnish any and all plant, materials, labor, construction equipment, services and transportation at JOC's sole cost and expense (all applicable taxes included) required for performing all Work specified in the Job Order, upon issuance of a Notice to Proceed by the City. JOC's Work shall include but shall not be limited to all improvements, fixtures, equipment and personal property necessary for JOC to complete the Work as specified therein.

2.2. JOC shall perform the Work, construct the same and install the materials as set forth herein for the City strictly in accordance with all applicable laws, ordinances, rules or regulations of any public authority with jurisdiction over the Project or Site, in a good and workmanlike, and substantial manner and diligently performed until completion, to the satisfaction of the City or properly authorized agents, in strict conformity with the Contract, and any modifications thereto.

2.3. Minor design services may be required for some Job Orders. For those Job Orders that may require design services the JOC shall seek the services of a licensed professional, registered in the State of Arizona, to prepare plans for permitting.

2.4. All documents prepared by the Design Professional are subject to review and approval by the City in its sole discretion. Review and/or approval by the City does not relieve the Design Professional from any professional liability associated with the documents.

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

3. CONTRACT PRICE AND JOB ORDER PRICE

3.1. Contract Price. This Contract will have a maximum dollar amount of Four Million Dollars ($4,000,000).

3.2. Job Order Price. Each Job Order under this Contract shall not exceed Six Hundred Thousand Dollars ($600,000) in construction costs, in the City's discretion. In no event will any Job Order exceed One Million Dollars ($1,000,000).

3.2.1. No changes, modifications or alterations to the Job Order shall be made without the prior written consent of the City. Unless otherwise provided in the Contract, each Job Order price shall 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, or which may be assessed during the term of the Contract.

3.2.2. Any additional costs including increased fees for architectural, engineering and other similar services arising by reason of any change, modification or alteration of the Job Order, additional construction costs or other expenses and/or damages incurred or suffered by the City as a result of or relating to JOC's delay or alteration(s) of the work performed under the Job Order, shall be at the sole cost and expense of JOC.

3.2.3. The amount of any contingency will be negotiated as a separate line item in each Job Order and shall not be modified except by City approval. The JOC will inform the City of use of contingency funds immediately upon use, by way of revising the schedule of values in the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on the schedule of values where the increased funds were used. If the contingency funds are used for a new line item that was not given with the original Schedule of Values, JOC will so indicate. At the time that contingency funds are used by JOC, applicable markups for overhead and profit will be applied. When all funds in the City's Contingency are expended, the JOC then is at risk to and shall be solely responsible for any additional increases in project costs for the scope of work described in the Contract and Job Order.

3.3. Procedure for Approval. The procedure for approval of Job Order price modifications is as follows:

Proposed Job Order price modifications shall be submitted in the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor	$ _____
Subtotal	$ _____
Overhead and Profit (per Table 1)	$ _____
Total	$ _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Combined Total	$ _____
JOC's Contingency	$ _____
City's Contingency	$ _____

3.4. Overhead and Profit Multiplier. Table 1 indicates the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the JOC'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

	$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	1.12	1.10	1.08	1.07	1.06

3.5. Percentages for Job Order. The insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

Insurance Percentage:	2.000%
Bonds (Performance and Payment)	1.735%
Sales Tax Percentage	5.265%

3.6. JOC Guarantee for Job Order Price. The JOC guarantees to bring each Job Order within the specified Job Order Price. Any and all other costs, expenses and/or damages incurred or suffered shall be at the sole cost and expense of the JOC.

3.7. Scope Conference. Prior to commencement of Work, a scope conference will be scheduled with the City to define design and construction services required of the JOC. The Job Order and related documents will be provided to the JOC by the City.

3.8. Submission of Proposal. The JOC will promptly submit a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order to the City for approval, based on the scope meeting and the provided documents. The City will review any submitted proposal. Upon City's approval of said proposal, the City and JOC agree to negotiate in good faith and, as expeditiously as possible, agree upon the Job Order price and the Duration of the Work. If no agreement can be reached, the City reserves the right to limit or reject outright any submitted proposal. Should the parties concur on the Job Order price and Duration of Work, the parties shall execute the Job Order reflecting its specific terms.

4. TIME OF COMPLETION

The JOC further covenants and agrees at its sole cost and expense, to perform all Work and furnish all plant, materials, labor, construction equipment, services and transportation for performance of all Work for the construction of each Job Order agreed to pursuant to this Contract and to construct 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. See Section 5.4.14 Completion of the Work, herein.

4.1. Contract Term. The effective date of this Contract shall be July 22, 2008. The Contract Term shall commence following issuance of a Notice to Proceed by the City for this Contract. This Contract shall be in effect for a twelve (12) month period, or until the Contract Price has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew the Contract for a twelve (12) month period or the balance of the Contract Price. In no event shall the Contract Term exceed three (3) years from its effective date.

The option to renew may be exercised by the City in the City's sole discretion. Such determination may be based on the JOC's successful performance under the Contract and the needs of the City as determined in the City's sole discretion.

4.2. Job Order Time. Job Orders may be issued at any time during the duration of this Contract by the City.

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

4.2.2. JOC agrees and covenants that it will commence performance of the Work and achieve completion of the Work within the Job Order Time.

4.2.3. Each Job Order Time shall be subject to adjustment in the City's sole discretion in accordance with this Contract.

4.3. Substantial Completion. Generally, the City will not approve Substantial Completion of buildings and/or building improvements. If the City determines that approval of Substantial Completion is necessary, said approval will be made in

the City's sole discretion. Substantial Completion of buildings and/or building improvements shall include: (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 representative thereof; (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 thirty (30) days prior to projected Substantial Completion.

For buildings and other projects, Substantial Completion as determined by the City, may also include: (a) elevator permits; (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/or, (e) final cleaning and remediation.

5. GENERAL PROVISIONS

5.1. JOC Requirements and Conditions.

5.1.1. Licenses. A Contract shall not be awarded to a Bidder who is not properly licensed. Prior to execution of this Contract, the JOC must obtain a valid City Transaction Privilege License at its sole expense and shall provide the Permit Number of such for validation to the City. JOC must carry the appropriate State of Arizona Contractor License at all times during the Contract Term.

JOC, at its sole cost, shall obtain all required governmental permits and approvals for all work and services performed hereunder.

Any and all Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed Work at the time of submission of a Job Order proposal. If the Subcontractor does not have the appropriate license, the City reserves the right to reject any or all of the Job Order proposal.

5.1.2. Examination of Premises. The JOC shall visit the Site of each Job Order and shall fully acquaint itself with all 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 to obtain, receive or examine any addenda to the proposed Contract, 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 agrees that it has examined the Site, Specifications and other Contract documents and accepts, without recourse, all Site conditions and the proposed Contract and all exhibits and addenda thereto.

5.1.3. Government Approvals and Permits.

a. Unless otherwise provided, JOC shall 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 at its sole expense. JOC expressly covenants and agrees that it will obtain any and all necessary environmental permits and/or file the necessary environmental notices at its cost prior to undertaking Work or performing services hereunder.

b. Copies of all permits and notices must be provided to the City's representative prior to starting any Work or performing services pursuant to 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.

c. The City agrees to be responsible for the City's own review and permit(s) fees for building and demolition permits only. In addition, the City shall bear its own review fees for grading and drainage, water, sewer, and landscaping. The City may agree to pay utility design fees for permanent services in its sole discretion. JOC shall be solely responsible for any and all other permit(s) and review fees not specifically designated herein.

d. JOC is responsible for all costs of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until completion of the Project. Arrangements for water at the Site or for construction purposes are the JOC's sole responsibility.

5.2. Award and Execution of Contract.

5.2.1. Execution of Contract. Except as provided herein to the contrary, the respective rights and remedies of the parties to this Contract shall be cumulative and in addition to any rights and remedies not specified in this Contract. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Contract and that this Contract supersedes any and all prior negotiations, arrangements, representations and understandings between the parties. No provision of this Contract may be amended except by an agreement in writing signed by the City. This Contract, including exhibits, attachments and schedules attached hereto, signed by the City and JOC covering the Job Order Construction Services, constitutes the entire agreement between the parties and shall be effective upon the date set forth herein. JOC shall execute the Contract, counterparts permitted, within ten (10) calendar days after formal Notice of Award of Contract by the City. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within ten (10) calendar days after the date of Notice of Award is issued shall result in cancellation of the award and this Contract may be

voided at the option of the City.

5.2.2. JOC Insurance and Bond Rating Requirements. JOC shall execute a bond for any and all work or services performed hereto, in accordance with A.R.S. § 34-211. 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.

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.

Prior to execution of each individual Job Order, the JOC shall provide a performance bond and a payment bond, each in an amount equal to the full amount (100%) of the price for each Job Order, in accordance with A.R.S. § 34-211.

5.2.3. Insurance Requirements. The JOC'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 shall furnish the City with certificates of insurance to verify each policy and compliance with the required coverages, conditions, and limits, and confirmation that each policy is in full force and effect. Such certificates shall identify the Project number herein and shall provide for not less than thirty (30) days advance written notice by certified mail of any event of cancellation or termination of such coverage(s).

Failure, neglect or refusal to secure and maintain insurance policies as set forth herein or to provide copies of policies or certificates, including renewal policies or certificates within the time specified herein shall result in termination of the Contract. Should the Project include construction of an improvement to an existing structure, builders risk insurance shall be obtained by JOC for the full amount of the Contract Price, in accordance with MAG Specification 103.6C.

5.2.4. Health Insurance Requirements. JOC who enters into a Contract with a Contract Price in excess of Thirty Thousand Dollars ($30,000) with the City must certify that it has, 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 and

provided to the City in the form included herein (page AFF-2). All required health insurance must be maintained during the entire time of the Contract.

Health insurance is required for all JOC and 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 (24) hour period, regardless of number of hours that the individual is paid. 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 Project, including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City 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 entity 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.

JOC and all Subcontractors subject to the health insurance requirements shall post, in English, notice of the health insurance requirements at its office and at the job Site. Signs for posting will be provided by the City upon request at the pre-construction conference or with a copy of the executed Contract.

5.3. Default: If JOC should default in the performance if its obligations under this Contract, the City shall provide written notice of the default to JOC and JOC shall have a reasonable time in which to cure the default, but in no event shall such time exceed thirty (30) days, without prior approval of the City, following receipt of City's written notification. If JOC fails to cure the condition as required within the time period, or if the default condition continues in violation of this Contract, City shall be entitled to remedy the default using any and all rights and remedies at law or in equity, in its reasonable discretion, including but not limited to, bringing a suit or proceeding to enforce the provisions of the Contract.

5.4. Termination. The City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance,

breach or convenience, pursuant to A.R.S. §38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the JOC. Termination shall be commenced by delivery of written notice to JOC by the City personally or by certified mail, return receipt requested. Upon notice of termination, JOC shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. JOC shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that JOC could reasonably have avoided.

5.5. Indemnification. To the fullest extent permitted by law, JOC shall defend, indemnify and hold City harmless, including City's agents, officers, assigns, officials and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of or alleged to have resulted from any negligent acts, errors, mistakes or omissions in the work or services performed by JOC and its agents, employees, subcontractors or assigns, for whom JOC may be deemed responsible, relating to any goods, services or materials arising from or relating to any term or covenant of this Contract. The amount and type of insurance coverage required of JOC as set forth herein will in no way be construed as limiting the scope of JOC's duties to indemnify the City. This provision shall survive the Contract Term.

5.6. Job Order Scope of Work.

5.6.1. Description of Work. The proposed work will be expressly defined by and within each Job Order. Job Orders shall be prepared and submitted in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with JOC'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 City, a Work schedule;

e. The place of performance;

f. The agreed total price for the Work to be performed;

g. Submittal requirements;

h. City'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.

5.6.2. 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, 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 establishment of a Job Order Notice to Proceed date. Emergency contact numbers and information shall be provided for all representatives involved in the course of construction.

JOC shall provide a responsible agent who is authorized to execute and sign documents on its behalf to attend the pre-construction conference. In addition, JOC will provide a job superintendent and safety officer to attend.

5.6.3. Traffic Control. All traffic relating to the Project shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City revisions, available at the JOC's request through the City Transportation Division (Transportation) at (480) 350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any other special provisions set forth herein.

At or around the time of the pre-construction conference, the JOC 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 ensure that traffic is carried through the Work area in an effective manner, and that motorists, pedestrians, bicyclists, and workers are protected from hazards including but not limited to, motor vehicle accidents. The City shall designate a representative who will oversee and monitor the JOC's agent and enforce the City's requirements as set forth herein. JOC covenants to give the City any assignment and/or assurances which may be necessary to affect such right of direct enforcement.

JOC is solely responsible for and assumes full liability for the traffic control relating to this Project. The JOC shall submit a traffic control plan to the City for its review and approval no less than one (1) week prior to commencing work under this Contract. Traffic as referenced herein, shall include any and all motor vehicles, bicyclists, and pedestrian traffic on roadways, sidewalks, bicycle paths, alleys and/or rights of way at, attendant to and/or adjacent to the Project.

In the event alteration of traffic control is required for work or services provided herein, alterations shall be made 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. The most restrictive provisions shall apply. The City will

undertake no responsibility or expenses relating to measurement or payment for traffic control. All costs and expenses of measurement or alteration of traffic control shall be included in the Job Order for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any and all revisions relating to traffic and/or traffic control shall be submitted to the City for review and approval in the City's sole discretion.

JOC is solely responsible for any and all loss, damage, replacement or repair necessitated to any traffic signal equipment, traffic signal conduit, and/or circuits, arising from or relating to JOC's Work or services performed hereunder. JOC shall have all repairs performed immediately at its sole expense by a licensed electrical contractor with experience in traffic signal repair, subject to pre-approval by the City. Any and all repairs and/or replacement costs expended by the City in this regard shall be reimbursed by the JOC at twice the City's actual cost.

The JOC shall notify all adjacent or affected residents and/or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk and/or driveway closures or modifications, 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. JOC shall abide by applicable speed limits. Additional information may be obtained by contacting the City Transportation Division at (480) 350-8219.

5.6.4. Clean Up. The JOC agrees and covenants to adequately protect the Work Site, adjacent property and the public in all phases of the Work and/or services provided herein. JOC shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. JOC shall maintain access to all phases of the Project pending inspection by the City or its agent. JOC hereby agrees to the following as to the job Site: continually keep the job Site free from debris, waste and accumulation of materials; immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary; keep machinery clean and free of weeds and debris; remove all construction stains, smears and debris from finished surfaces; perform Site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and, remove all equipment, materials, tools and JOC's personal property prior to submission of final invoice to the City.

JOC shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job Site. Should the JOC fail to respond promptly as set forth herein, the City shall correct the job Site at the expense of the JOC, and recover all attendant costs.

5.6.5. 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 become 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.

5.6.6. Subsidiary Work. All Work called for in the Plans and Specifications shall be performed by the JOC 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.

5.7. Control of Work.

5.7.1. Interpretations of Drawing and Documents. If any JOC 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, or finds discrepancies in or omissions from the Contract, such JOC may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC 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 who shall distribute the addendum to the appropriate Subcontractor(s). The City will not be responsible for any other explanation or interpretations of the documents.

5.7.2. JOC's Representative. The JOC 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's foreman or agent on the Work shall be considered as having been given to the JOC.

5.7.3. 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.

5.7.4. Supervision by JOC. The JOC will supervise and direct the Work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the JOC as the JOC's representative at the Site. The supervisor shall have full authority to act on behalf of the JOC and all communications given to the supervisor shall be as binding as if given to the JOC. 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 and the City.

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

5.7.6. Survey Control Points. Existing survey monuments shall be protected by the JOC or removed and replaced under the direct supervision of the City surveyor or the City surveyor's authorized representatives.

Prior to construction, the JOC shall notify the City surveyor of any survey monuments which need to be referenced off of the monument. Any monuments lost that have not been referenced off due to the JOC's negligence and/or lack of notification to the City surveyor shall be replaced at the JOC'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.

5.7.7. 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, 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 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 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.

5.7.8. Shop Drawings, Schedules and Samples. In time for each to serve its proper purpose and function, the JOC 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 for which the submittal is made. The additional copies received will be returned to the JOC's representative at the job Site. The Engineer's notations of the action 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 job Site Contract, 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 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.

5.7.9. As-Built Plans. The JOC shall provide and maintain accurate field data on a redlined 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, and certified to be complete by the architect/engineer of record.

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

5.7.11. Inspection. The JOC 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 must call for final inspections from the Development Services and Public Works Departments of the City. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

5.7.12. Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC 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.

5.7.13. 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 and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

5.7.14. Completion of the Work. Completion of the Work is full completion of all construction associated with the 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.

5.7.15. Final Acceptance and Guarantee. Final Acceptance shall mean a written Final Acceptance of the Work by the City. The City Engineer shall make the Final Acceptance promptly after the Work has been completed in accordance with the Contract and after inspection is made. The Work performed under this Contract shall be guaranteed by the JOC for a period of one (1) year from the date of Final Acceptance.

5.7.16. Substitution of Subcontractors. The JOC shall not substitute any Subcontractor in place of a Subcontractor listed in its Job Order Proposal except as specifically authorized by the City or pursuant to Arizona law.

5.8. Control of Materials.

5.8.1. Excess Materials. Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC. The JOC 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.

5.8.2. 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 the Contract and it shall be the duty of the JOC 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 as though contained in the original Contract.

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 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 Final Acceptance of the material nor shall it preclude retesting or reinspection at the Site of the Work.

5.9. Legal Regulations and Responsibilities to Public.

5.9.1. Conflict of Interest. This Contract is subject to cancellation under the provisions of A.R.S. § 38-511.

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

5.9.3. Non-Discrimination. City is an equal opportunity, affirmative action employer. JOC hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. JOC covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. In addition, JOC agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act and the Fair and Legal Employment Act and all laws, rules and regulations attendant thereto. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

The JOC 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 this clause.

5.9.4. 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 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 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 haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC 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 Transportation Division. Prior to submittal, the JOC should contact Engineering Services for complete details for issuance of the City haul permit.

5.9.5. Environmental Requirements.

a. JOC covenants and agrees that it shall, at all times during the term of the Contract, and at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of or operations at the Project Site by JOC, its agents, assigns and/or employees. JOC agrees that should it or any of its agents, assigns or employees know of (a) any violation of environmental laws relating to the Project Site, or (b) the escape, release or threatened release of any hazardous materials in, on, under or about the Project Site, JOC shall promptly notify the City in writing of such, and that it will provide all warnings of exposure to hazardous materials in, on, under or about the Project Site in strict compliance with all applicable environmental laws. Further, JOC covenants and agrees that it shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on under or about the Project Site, any hazardous materials, or permit or allow any of its agents, assigns or employees to do so. Prior to use of the Project Site the JOC shall provide the City an inventory of all equipment and materials stored and/or to be stored at the Project Site.

b. For purposes of this Contract, hazardous materials shall include but is not limited to, any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any environmental laws, including without limitation, any (a) substance defined as a "hazardous substance", "extremely hazardous substance", "hazardous material", "hazardous chemical", "hazardous waste", "toxic substance" or "air pollutant" by federal laws, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., and all amendments thereto, or other similar governmental restrictions; and (b) any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance,

injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any hazardous materials laws; (iii) gives rise to any reporting, notice or publication requirements under any hazardous materials laws; or (iv) gives rise to any liability, responsibility or duty on the part of the City or JOC with respect to any third person under any hazardous materials laws.

In addition, JOC must comply with the following requirements:

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

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

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

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

e. 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.

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

g. City refuse roll-off containers shall be used on City projects. Please contact the City, acting sanitation supervisor, with any questions.

h. 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.

i. The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume at or around the identified area(s) until approved by the Engineer.

j. 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.

5.9.6. Safety Requirements. The JOC shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements including but not limited to, the Federal Occupational Safety and Health Act of 1970 (29 U.S. § 651 et seq.), and all rules, regulations, and orders adopted pursuant thereto. In addition, the following requirements are applicable for City construction projects.

5.9.7. Briefing. The JOC will be required to attend a City safety briefing. The safety briefing session shall address the following City safety rules and expectations:

a. Contractor Tailgates. JOC shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.

b. Accident/Injury/Illness Procedures. The City's Construction Manager and the Risk Management Division shall be contacted within twenty-four (24) hours, upon the occurrence of any accident, injury or illness on the Project.

c. Unsafe Acts. JOC employees shall take any and all reasonable acts to stop an unsafe act or condition at the Project Site.

d. Safety Audits. The City reserves the right to conduct safety audits at the job Site at any time. In addition, JOC shall immediately notify the City should an OSHA inspection occur at a Project Site.

e. Job and Site Specific Requirements. JOC shall comply with all site specific requirements such as lockout/tagout rules and evacuation plans, which shall be covered during safety briefing(s) by the City.

If applicable to the Project JOC shall:

a. 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 implementing a confined space program, JOC shall 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, JOC shall provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be included in each agenda of 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 obtain copies of all agendas, minutes of the meetings, and documentation of any safety tailgate meetings held regarding the Project Site.

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

No additional payment by the City will be made to JOC or its subcontractor for temporary barricades.

5.9.9. Protection of Finished or Partially Finished Work. The JOC 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 completed Work shall not release the JOC from responsibility prior to City's acceptance, but JOC shall turn over the entire Work in full in accordance with the Specifications before final payment will be made.

5.9.10. Blue Stake. The JOC is required to notify Arizona Blue Stake, Inc. at (602) 263-1100 or otherwise first determine whether underground facilities will be encountered, and if so where they are located from each and every underground facilities operator and taking measures for control of the facilities in a careful and prudent manner, prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21, et seq. The JOC shall contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities prior to undertaking any Work.

5.9.11. Salt River Project Construction Clearance Agreement. Salt River Project requires JOC if working on its facilities, to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. JOC shall execute the Construction Clearance Agreement with Salt River Project, if required, and furnish a copy to the City prior to proceeding with any construction on Salt River Project facilities. 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 JOC 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.

5.9.12. Notification of Property Owners. JOC shall notify all property owners that may be affected by the proposed construction activities of the scope and duration of the construction activities prior to start of any Work or construction.

5.9.13. Access. JOC shall maintain public access to adjacent businesses of the Project Site 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, access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained by the JOC during all non-working hours.

5.9.14. Protection of Existing Facilities. The JOC shall protect all existing facilities during construction or Work. Utility poles that may be affected by construction activities shall be protected and/or braced by the JOC. The JOC shall notify the appropriate utility company or agency of any construction or Work that may affect its facilities and state the course of action which will be taken to protect same.

5.9.15. Storm Water Pollution Prevention Plan and AZPDES Permit. JOC shall secure a General Permit, if required, pursuant to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. JOC 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 and as set forth pursuant to 18 A.A.C. 9 Art 9. The AZPDES construction general permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from the City Engineering Division and at www.adeq.state.az.us/environ/water/permits/links.html.

The JOC shall complete and submit the following documents to the City for any Job Order that qualifies for this provision prior to undertaking any Work:

a. 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.

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

c. 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 shall submit completed and signed NOI forms prior to receipt of the 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 shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the JOC (or any of its 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 JOC will not be entitled to any claim for additional compensation or costs resulting from such a delay in the construction start date. The NOI shall be posted on the Project Site along with the SWPPP.

JOC shall perform inspections of all stormwater pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The JOC is responsible for maintaining those devices in proper working order, including cleaning and/or repair.

The JOC, as the permittee of construction activities with stormwater discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality. 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.

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

Upon total project completion, acceptance, and de-mobilization, JOC shall submit it's 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, including all 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 JOC is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include JOC's 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.

5.10. Commencement, Prosecution and Progress.

5.10.1. Time is of the Essence. All time limits specified in this Contract are of the essence to the Contract.

5.10.2. Start of Work. Work shall start as soon as practical, and in no case later than seven (7) calendar days after the issuance of the Notice to Proceed for each Job Order by the City, and shall be completed within the Contract Completion Date.

5.10.3. 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 take into account anticipated or actual 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.

5.10.4. JOC's Construction Schedule. Prior to the start of Work, JOC shall provide the City with a construction progress schedule for all Project(s) and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be produced by the JOC with the submission of each monthly pay request to the City.

5.10.5. Hindrances and Delays. Except as provided herein, no charge shall be made by the JOC for hindrances or delays from any cause during the progress of any portion of the Work set forth in this Contract; but such delays, if due to no fault or neglect of the JOC, may entitle the JOC to a time extension sufficient to compensate for the delays. The amount of the time extension, if any, shall be determined by the Engineer provided the JOC gives the Engineer immediate notice in writing of the cause of such delay.

The parties agree to negotiate in good faith for the recovery of damages related to expenses incurred by the JOC for a delay for which the City is solely responsible which is unreasonable under the circumstances; and which delay was not within the contemplation of the parties to the Contract at the time the Contract was entered into, and,

a. Unless specifically provided for herein, 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.

b. This section shall not be construed to void any provisions of this Contract, which require notice of delays, which provide for alternative

dispute resolution, other procedures for settlement, or which provide for liquidated damages.

However, if the parties can reach no agreement for the recovery of damages as set forth herein, the determination of the City shall be final.

5.10.6. 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.

5.10.7. 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.

5.10.8. 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 each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

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

5.10.10. 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.

5.10.11. 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.

5.10.12. 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.

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

5.10.14. 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. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC and not for the benefit of any other party.

5.10.15. Cooperation and Further Documentation. The JOC 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.

5.10.16. 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.

5.10.17. Patented and Copyright Materials; Property Rights. JOC shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used or incorporated into the Project and agrees to hold harmless, defend and indemnify the City, its officers, employees, representatives and agents, from all suits, actions or claims for or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes. Nothing herein shall be construed as vesting in the JOC any property right, including but not limited to intellectual property rights, in the materials or equipment after completion of the Project. All such materials and equipment shall become the property of the City upon completion of the Project, and the JOC warrants and represents that all such property shall pass to the City free and clear of all liens, claims, security interests or encumbrances.

5.11. Measurements and Payments.

5.11.1. Contract Price Adjustments. Any 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:

a. Unit prices set forth in the Job Order or as subsequently approved by the City;

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

c. Costs, fees and any other markups, upon approval by the City.

Any increases on such changes shall not exceed those delineated in the approved Job Order.

If an increase or decrease cannot be agreed to by the City as set forth in items (a) through (c), 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 shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

If the City and the JOC disagree upon whether the JOC 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 shall resolve the disagreement pursuant to MAG Specification 110.

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

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

5.11.2. Record Keeping and Finance Controls. Records of the JOC's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC shall be kept on a generally accepted accounting basis. City reserves the right to inspect any and all records relating to the Project.

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

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

The JOC shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract 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 records relating to the Project to verify the accuracy and appropriateness of pricing data.

5.11.3. Payments by City. Payments by the City pursuant to A.R.S. § 34-221 et seq., shall be in the form of monthly progress payments to JOC upon approval of duly certified and approved estimate(s) of the Work performed during the preceding calendar month under the Contract. Payment may include funds for material and equipment. Said payments shall be made on or before fourteen (14) days after the estimate of the Work by JOC is certified and approved by the City. Upon fifty percent (50%) completion of the Project Work, one-half (1/2) of the retained amount shall be paid to the JOC upon JOC's request, provided JOC is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained, as determined by the City. Notwithstanding the foregoing, City reserves the right to retain ten percent (10%) of the amount of each estimate until final completion and acceptance of all material, Work and equipment covered by the Contract. In addition, the City shall withhold an amount from any progress payment sufficient to pay expenses the City reasonably expects to incur in correcting any deficiencies in JOC's Work under the Contract. In any event, the City shall retain ten percent (10%) of all Work estimates as guarantee for complete performance of the Contract. Upon final completion and acceptance of the Work by the City, JOC shall be paid within sixty (60) days after JOC's filing of notice of completion.

5.11.4. Payments by Contractor. In accordance with A.R.S. § 34-221(G), JOC agrees to promptly pay all Subcontractors within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Subcontractor or subordinate Subcontractors, on account of the Work performed by each to the extent of each such Subcontractor's interest therein, except that no contract for construction may materially alter the rights of any Subcontractor or material supplier to receive prompt and timely payment.

5.11.5. 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 further agrees that the City 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 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 JOC from any of the obligations or liabilities hereunder, or entitle JOC to any damages or compensation except as may be provided for in this Contract.

6. SPECIAL PROVISIONS

6.1. Key Contacts.

City Engineering (Project Manager)	Tom Wilhite	(480) 350-2921
City Engineering		(480) 350-8200
Blue Stake		(602) 263-1100

6.2. 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, if necessary, will be paid for by the City.

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

The duration of 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.

6.4. Confidentiality of Plans and Specifications. Any Plans or Specifications the JOC receives regarding this project are for official use only. The JOC 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 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's Contract with the City of Tempe".

6.5. Irrigation and Landscape Repair. The JOC 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 JOC meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

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

6.7. Coordination with Other Contractors. Coordination between contractors may be required. Should the JOC 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's performance of the Work at the Site be made by any separate contractor against the JOC, Design Engineer, or Construction Manager or any other person, JOC shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC shall, to the fullest extent permitted by laws and regulations, defend, indemnify and hold City, 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 City, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC's performance of the Work.

Should a separate contractor cause damage to the work or property of JOC or should the performance of work by any separate contractor at the Site give rise to any other claim, JOC shall not institute any action, legal or equitable against City, 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 City, 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 is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and City and JOC are unable to agree as to the extent of any adjustment in completion time attributed thereto, JOC may make a claim for an extension of time. An extension of the completion time shall be JOC's exclusive remedy with respect to City, 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.

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

FOR

GENERAL CONSTRUCTION SERVICES

Caliente Construction, Inc.

CITY COUNCILMEMBERS

Mayor – Hugh Hallman

Mark Mitchell

Joel Navarro

Shana Ellis

P. Ben Arredondo

Onnie Shekerjian

Corey Woods

2008

CONTRACT

THIS CONTRACT is made and entered into this 22nd day of July, 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 ("City"), and Caliente Construction, Inc., an Arizona corporation, ("JOC").

RECITALS

I. The City intends to have a number of projects ("Project") which will be constructed as Job Orders.

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

NOW THEREFORE, each party, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees as follows:

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.

1.1. **"Addendum"** means a document issued by the City during the bidding period that modifies or supersedes portions of the Contract as to additional specifications, forms or other information.

1.2. **"Alternate Systems Evaluations"** means alternatives for design, means and methods or other scope considerations that are evaluated by the City using value engineering principles for a potential reduction of construction costs of a quality and functional Project per City requirements.

1.3. **"Amendment"** means a written modification of the terms of this Contract signed by an authorized agent of the City.

1.4. **"Award"** means the formal action of the City Council to accept a Contract.

1.5. **"Business Day"** means any calendar day except for Saturdays, Sundays and holidays observed by the City.

1.6. **"Change Order"** means a written agreement entered into after the award of the Job Order that alters or amends the Job Order.

1.7. **"City"** means the City of Tempe, a public body or authority and municipal corporation, with whom the JOC has entered into this Contract and for whom the services are to be provided pursuant to this Contract.

1.8. **"City's Contingency"** means a fund to cover cost growth during the Contract Term used at the sole discretion of the City for anticipated costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen Site conditions.

1.9. **"Construction Fee"** means the JOC's total administrative costs, including home office overhead if any, and profit, whether at the JOC's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are provided in the General Conditions sections of the Contract, construction phase, set forth herein.

1.10. **"Construction Manager Professional"** means 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.

1.11. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by the City and JOC covering the Job Order Construction Services. The Contract collectively represents the entire agreement between the City and the JOC, and which supersedes any prior negotiations, representations or agreements, either written or oral.

1.12. **"Contractor"** means the individual, firm, or corporation, its successors and assigns, that enters into a contract with the City.

1.13. **Contractor's Contingency"** or **"JOC's Contingency"** means a fund to cover non-general conditions cost growth during the Project used subject to City's approval in its sole discretion, generally utilized for costs that result from Project circumstances. The JOC's Contingency or Contractor's Contingency shall not be used for General Conditions Costs.

1.14. **"Contract Price"** means the dollar amount(s) set forth in this Contract for the Contract Term, subject to modification only upon prior written approval by the City.

1.15. **"Contract Services"** means all labor, services, work, materials and other incidentals of the scope of Work required by the Contract to complete a Job Order.

1.16. **"Contract Term"** means the term of this Contract from the Effective Date set forth herein to the completion date or date of termination by the City.

1.17. **"Cost of the Work"** means the direct costs necessarily incurred by the JOC 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's construction fee, general conditions fee, taxes, bonds, or insurance costs.

1.18. **"Cost Model"** means a breakdown of the scope of the Project that is initially developed by the JOC during the conceptual Design Phase and based on information from the Project Team and the JOC's records of similar projects. The model will evolve as the design progresses, be maintained by the JOC throughout the Design Phase and will include any assumptions and clarifications made by the JOC. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The Cost Model is subject to approval by the City in its sole discretion.

1.19. **"Day(s)"** means calendar day(s) unless otherwise expressly stated herein.

1.20. **"Deliverables"** means the Work products prepared by the JOC in performing the scope of Work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC 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.

1.21. **"Design Engineer"** means the person, firm or corporation having a contract with the City to furnish design services for this Project.

1.22. **"Design Engineer's Consultant"** means a person, firm, entity 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.

1.23. **"Design Phase"** means the designated period of time in which Design Services are performed for required features, functions, characteristics, qualities and/or properties for the Project, occurring either sequentially or concurrently with the construction of the Project.

1.24. **"Design Professional"** means a qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order, including but not limited to, architect, engineer and/or landscape architect.

1.25. **"Differing Site Conditions"** means concealed, 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.

1.26. **"Duration of the Work"** means the number of days from a Job Order Notice to Proceed to Substantial Completion.

1.27. **"Effective Date of this Contract"** means 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 parties signs this Contract.

1.28. **"Engineer"** means the City Engineer acting directly or through its duly authorized representative.

1.29. **"Final Acceptance"** means the approval and acceptance by the City of the scope of work set forth herein, following completion of a Job Order by the JOC as prescribed in each Job Order.

1.30. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of the JOC during the construction phase, including but not limited to: 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 or subcontractors; and fees for permits and licenses.

1.31. **"Guaranteed Maximum Price (GMP) Proposals"** means the offer of a proposal detailing the qualifications, assumptions, exclusions, value engineering and any and all other requirements set forth in the scope of Work for the Job Order.

1.32. **"JOC"** means firm or entity selected by the City to provide or procure construction and design services as detailed in this Contract.

1.33. **"JOC Payment Request"** means the form used by the JOC to request progress payments by the City for Work and/or services completed under certain Job Orders in accordance with this Contract. JOC Payment Requests are subject to the City's review and approval, in its sole discretion.

1.34. **"JOC's Representative"** means the person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.35. **"JOC's Senior Representative"** means the highest ranking person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.36. **"Job Order"** means a firm, fixed price, competitively bid, indefinite quantity type Contract designed to accomplish small to medium, multi-traded maintenance, repair and minor new construction projects for the City. The Job Order may include a Job Order Price, Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order may also include plans, technical specifications, special provisions and the JOC's proposal either by reference or inclusion.

1.37. **"Job Order Price"** means the sum of the maximum cost of the Work that can be ordered during the initial term of the Contract, including but not limited to, the construction price of the JOC(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's contingency, if any, pursuant to this Contract. The approved Job Order Price will be made a material provision of this Contract upon execution of the Job Order.

1.38. **"Job Order Time"** means the time from the issuance of a Job Order Notice to Proceed by the City to the City's approval of JOC's Substantial Completion. A Job Order Time shall be incorporated into this Contract upon execution of each Job Order.

1.39. **"Laws and Regulations"** means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all federal, state, and local governmental bodies, agencies, authorities and courts having jurisdiction over the subject Project, Site, and/or any Work pursuant to this Contract.

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

1.41. **"MAG Specifications"** means Maricopa Association of Governments 2008 Uniform Standard Details for Public Works Construction and 2008 Uniform Standard Specifications for Public Works Construction, latest editions, and the City of Tempe Supplement thereto. All Work done under this Contract shall be accomplished in accordance with the MAG Specifications except as specifically modified herein. In the event of any conflict between the Contract and the requirements of the MAG Specifications, the Contract shall prevail.

1.42. **"Miscellaneous Removal and Relocations"** means 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 that may require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, are included in this category.

1.43. **"Notice of Award"** means the written notice by the City to the JOC stating that upon compliance by the JOC with the conditions precedent enumerated therein, within the time specified, the City anticipates the execution of this Contract.

1.44. **"Notice to Proceed"** means written notification from the City to the JOC establishing the date on which performance of the JOC's obligations under this Contract shall begin.

1.45. **"Plans"** means documents setting forth visual representations of the scope, extent and character of the Work to be furnished and performed by the JOC during the construction phase of the Project, and which have been prepared and approved by

the Design Engineer for the City. This definition includes Plans that have reached a sufficient stage of completion as determined by the City, and that have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or bidability 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 specifically excluded from this definition.

1.46. **"Product Data"** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC to illustrate materials or equipment for any portion of the Work.

1.47. **"Project"** means the total design and construction of improvements, or services and/or Work to be performed by the JOC Contractor pursuant to an express fixed-price Job Order.

1.48. **"Project Team"** means a construction services unit consisting of a Design Professional, JOC, the City (Water Utilities Department representatives, design project manager, construction project manager), Construction Manager Professional and other persons who are responsible for making decisions regarding the Project, as approved by the City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by the City.

1.49. **"Record Documents"** means any and all data storage medium(s), including but not limited to, any and all documents, memoranda, minutes, contracts, agreements, accounting data, as-built documents, operations and maintenance manuals, project manuals, and specifications created pursuant to or relating to this Contract. Record Documents shall be kept for a period of five (5) years following the close of each calendar year of the Contract Term and any renewals thereof, and JOC shall keep full and accurate books of account relative to transactions relating to the Contract, in accordance with generally accepted accounting principles.

1.50. **"Samples"** means physical examples of materials, equipment or workmanship representative of a part of the construction phase establishing the standards by which that portion of the construction phase Work will be evaluated.

1.51. **"Shop Drawings"** means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC and submitted by the JOC to the City to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

1.52. **"Site"** means the land, area or premises where the Project Work and Services shall be undertaken and/or completed, or upon which the subject project of a Job Order is located.

1.53. **"Specifications"** means the technical specifications for the construction phase of this Project consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and

administrative details applicable thereto.

1.54. **"Subcontractor or Subconsultant"** means an individual, firm, entity or corporation other than JOC's employees, having a contract with the JOC to undertake to perform a part or portion of the Design Phase services or construction phase Work at the Site for which the JOC is responsible.

1.55. **"Substantial Completion"** means when the Work, or a significant portion of the Work as determined by the City, is sufficiently completed so that the City, in its sole discretion, can occupy and use the Project Site for its intended purposes.

1.56. **"Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC or with any Subcontractor to furnish materials or equipment.

1.57. **"Total Float"** means 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, as determined by the City.

1.58. **"Work"** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction, design and/or repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

2. SCOPE OF THE WORK

2.1. The JOC shall furnish any and all plant, materials, labor, construction equipment, services and transportation at JOC's sole cost and expense (all applicable taxes included) required for performing all Work specified in the Job Order, upon issuance of a Notice to Proceed by the City. JOC's Work shall include but shall not be limited to all improvements, fixtures, equipment and personal property necessary for JOC to complete the Work as specified therein.

2.2. JOC shall perform the Work, construct the same and install the materials as set forth herein for the City strictly in accordance with all applicable laws, ordinances, rules or regulations of any public authority with jurisdiction over the Project or Site, in a good and workmanlike, and substantial manner and diligently performed until completion, to the satisfaction of the City or properly authorized agents, in strict conformity with the Contract, and any modifications thereto.

2.3. Minor design services may be required for some Job Orders. For those Job Orders that may require design services the JOC shall seek the services of a licensed professional, registered in the State of Arizona, to prepare plans for permitting.

2.4. All documents prepared by the Design Professional are subject to review and approval by the City in its sole discretion. Review and/or approval by the City does not relieve the Design Professional from any professional liability associated with the documents.

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

3. CONTRACT PRICE AND JOB ORDER PRICE

3.1. Contract Price. This Contract will have a maximum dollar amount of Four Million Dollars ($4,000,000).

3.2. Job Order Price. Each Job Order under this Contract shall not exceed Six Hundred Thousand Dollars ($600,000) in construction costs, in the City's discretion. In no event will any Job Order exceed One Million Dollars ($1,000,000).

3.2.1. No changes, modifications or alterations to the Job Order shall be made without the prior written consent of the City. Unless otherwise provided in the Contract, each Job Order price shall 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, or which may be assessed during the term of the Contract.

3.2.2. Any additional costs including increased fees for architectural, engineering and other similar services arising by reason of any change, modification or alteration of the Job Order, additional construction costs or other expenses and/or damages incurred or suffered by the City as a result of or relating to JOC's delay or alteration(s) of the work performed under the Job Order, shall be at the sole cost and expense of JOC.

3.2.3. The amount of any contingency will be negotiated as a separate line item in each Job Order and shall not be modified except by City approval. The JOC will inform the City of use of contingency funds immediately upon use, by way of revising the schedule of values in the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on the schedule of values where the increased funds were used. If the contingency funds are used for a new line item that was not given with the original Schedule of Values, JOC will so indicate. At the time that contingency funds are used by JOC, applicable markups for overhead and profit will be applied. When all funds in the City's Contingency are expended, the JOC then is at risk to and shall be solely responsible for any additional increases in project costs for the scope of work described in the Contract and Job Order.

3.3. Procedure for Approval. The procedure for approval of Job Order price modifications is as follows:

Proposed Job Order price modifications shall be submitted in the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor	$ _____
Subtotal	**$** _____
Overhead and Profit (per Table 1)	$ _____
Total	**$** _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Combined Total	**$** _____
JOC's Contingency	**$** _____
City's Contingency	**$** _____

3.4. Overhead and Profit Multiplier. Table 1 indicates the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the JOC'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

	$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	1.12	1.10	1.08	1.07	1.06

3.5. Percentages for Job Order. The insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

General Liability Insurance	1.0%
Builders Risk Insurance Percentage:	1.0%
Bonds (Performance and Payment)	1.0%
Sales Tax Percentage	5.265%

3.6. JOC Guarantee for Job Order Price. The JOC guarantees to bring each Job Order within the specified Job Order Price. Any and all other costs, expenses and/or damages incurred or suffered shall be at the sole cost and expense of the JOC.

3.7. Scope Conference. Prior to commencement of Work, a scope conference will be scheduled with the City to define design and construction services required of the JOC. The Job Order and related documents will be provided to the JOC by the City.

3.8. Submission of Proposal. The JOC will promptly submit a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order to the City for approval, based on the scope meeting and the provided documents. The City will review any submitted proposal. Upon City's approval of said proposal, the City and JOC agree to negotiate in good faith and, as expeditiously as possible, agree upon the Job Order price and the Duration of the Work. If no agreement can be reached, the City reserves the right to limit or reject outright any submitted proposal. Should the parties concur on the Job Order price and Duration of Work, the parties shall execute the Job Order reflecting its specific terms.

4. TIME OF COMPLETION

The JOC further covenants and agrees at its sole cost and expense, to perform all Work and furnish all plant, materials, labor, construction equipment, services and transportation for performance of all Work for the construction of each Job Order agreed to pursuant to this Contract and to construct 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. See Section 5.4.14 Completion of the Work, herein.

4.1. Contract Term. The effective date of this Contract shall be July 22, 2008. The Contract Term shall commence following issuance of a Notice to Proceed by the City for this Contract. This Contract shall be in effect for a twelve (12) month period, or until the Contract Price has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew the Contract for a twelve (12) month period or the balance of the Contract Price. In no event shall the Contract Term exceed three (3) years from its effective date.

The option to renew may be exercised by the City in the City's sole discretion. Such determination may be based on the JOC's successful performance under the Contract and the needs of the City as determined in the City's sole discretion.

4.2. Job Order Time. Job Orders may be issued at any time during the duration of this Contract by the City.

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

4.2.2. JOC agrees and covenants that it will commence performance of the Work and achieve completion of the Work within the Job Order Time.

4.2.3. Each Job Order Time shall be subject to adjustment in the City's sole discretion in accordance with this Contract.

4.3. Substantial Completion. Generally, the City will not approve Substantial Completion of buildings and/or building improvements. If the City determines that approval of Substantial Completion is necessary, said approval will be made in

the City's sole discretion. Substantial Completion of buildings and/or building improvements shall include: (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 representative thereof; (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 thirty (30) days prior to projected Substantial Completion.

For buildings and other projects, Substantial Completion as determined by the City, may also include: (a) elevator permits; (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/or, (e) final cleaning and remediation.

5. GENERAL PROVISIONS

5.1. JOC Requirements and Conditions.

5.1.1. Licenses. A Contract shall not be awarded to a Bidder who is not properly licensed. Prior to execution of this Contract, the JOC must obtain a valid City Transaction Privilege License at its sole expense and shall provide the Permit Number of such for validation to the City. JOC must carry the appropriate State of Arizona Contractor License at all times during the Contract Term.

JOC, at its sole cost, shall obtain all required governmental permits and approvals for all work and services performed hereunder.

Any and all Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed Work at the time of submission of a Job Order proposal. If the Subcontractor does not have the appropriate license, the City reserves the right to reject any or all of the Job Order proposal.

5.1.2. Examination of Premises. The JOC shall visit the Site of each Job Order and shall fully acquaint itself with all 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 to obtain, receive or examine any addenda to the proposed Contract, 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 agrees that it has examined the Site, Specifications and other Contract documents and accepts, without recourse, all Site conditions and the proposed Contract and all exhibits and addenda thereto.

5.1.3. Government Approvals and Permits.

a. Unless otherwise provided, JOC shall 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 at its sole expense. JOC expressly covenants and agrees that it will obtain any and all necessary environmental permits and/or file the necessary environmental notices at its cost prior to undertaking Work or performing services hereunder.

b. Copies of all permits and notices must be provided to the City's representative prior to starting any Work or performing services pursuant to 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.

c. The City agrees to be responsible for the City's own review and permit(s) fees for building and demolition permits only. In addition, the City shall bear its own review fees for grading and drainage, water, sewer, and landscaping. The City may agree to pay utility design fees for permanent services in its sole discretion. JOC shall be solely responsible for any and all other permit(s) and review fees not specifically designated herein.

d. JOC is responsible for all costs of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until completion of the Project. Arrangements for water at the Site or for construction purposes are the JOC's sole responsibility.

5.2. Award and Execution of Contract.

5.2.1. Execution of Contract. Except as provided herein to the contrary, the respective rights and remedies of the parties to this Contract shall be cumulative and in addition to any rights and remedies not specified in this Contract. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Contract and that this Contract supersedes any and all prior negotiations, arrangements, representations and understandings between the parties. No provision of this Contract may be amended except by an agreement in writing signed by the City. This Contract, including exhibits, attachments and schedules attached hereto, signed by the City and JOC covering the Job Order Construction Services, constitutes the entire agreement between the parties and shall be effective upon the date set forth herein. JOC shall execute the Contract, counterparts permitted, within ten (10) calendar days after formal Notice of Award of Contract by the City. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within ten (10) calendar days after the date of Notice of Award is issued shall result in cancellation of the award and this Contract may be

voided at the option of the City.

5.2.2. JOC Insurance and Bond Rating Requirements. JOC shall execute a bond for any and all work or services performed hereto, in accordance with A.R.S. § 34-211. 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.

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.

Prior to execution of each individual Job Order, the JOC shall provide a performance bond and a payment bond, each in an amount equal to the full amount (100%) of the price for each Job Order, in accordance with A.R.S. § 34-211.

5.2.3. Insurance Requirements. The JOC'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 shall furnish the City with certificates of insurance to verify each policy and compliance with the required coverages, conditions, and limits, and confirmation that each policy is in full force and effect. Such certificates shall identify the Project number herein and shall provide for not less than thirty (30) days advance written notice by certified mail of any event of cancellation or termination of such coverage(s).

Failure, neglect or refusal to secure and maintain insurance policies as set forth herein or to provide copies of policies or certificates, including renewal policies or certificates within the time specified herein shall result in termination of the Contract. Should the Project include construction of an improvement to an existing structure, builders risk insurance shall be obtained by JOC for the full amount of the Contract Price, in accordance with MAG Specification 103.6C.

5.2.4. Health Insurance Requirements. JOC who enters into a Contract with a Contract Price in excess of Thirty Thousand Dollars ($30,000) with the City must certify that it has, 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 and

provided to the City in the form included herein (page AFF-2). All required health insurance must be maintained during the entire time of the Contract.

Health insurance is required for all JOC and 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 (24) hour period, regardless of number of hours that the individual is paid. 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 Project, including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City 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 entity 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.

JOC and all Subcontractors subject to the health insurance requirements shall post, in English, notice of the health insurance requirements at its office and at the job Site. Signs for posting will be provided by the City upon request at the pre-construction conference or with a copy of the executed Contract.

5.3. Default: If JOC should default in the performance if its obligations under this Contract, the City shall provide written notice of the default to JOC and JOC shall have a reasonable time in which to cure the default, but in no event shall such time exceed thirty (30) days, without prior approval of the City, following receipt of City's written notification. If JOC fails to cure the condition as required within the time period, or if the default condition continues in violation of this Contract, City shall be entitled to remedy the default using any and all rights and remedies at law or in equity, in its reasonable discretion, including but not limited to, bringing a suit or proceeding to enforce the provisions of the Contract.

5.4. Termination. The City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance,

breach or convenience, pursuant to A.R.S. §38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the JOC. Termination shall be commenced by delivery of written notice to JOC by the City personally or by certified mail, return receipt requested. Upon notice of termination, JOC shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. JOC shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that JOC could reasonably have avoided.

5.5. Indemnification. To the fullest extent permitted by law, JOC shall defend, indemnify and hold City harmless, including City's agents, officers, assigns, officials and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of or alleged to have resulted from any negligent acts, errors, mistakes or omissions in the work or services performed by JOC and its agents, employees, subcontractors or assigns, for whom JOC may be deemed responsible, relating to any goods, services or materials arising from or relating to any term or covenant of this Contract. The amount and type of insurance coverage required of JOC as set forth herein will in no way be construed as limiting the scope of JOC's duties to indemnify the City. This provision shall survive the Contract Term.

5.6. Job Order Scope of Work.

5.6.1. Description of Work. The proposed work will be expressly defined by and within each Job Order. Job Orders shall be prepared and submitted in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with JOC'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 City, a Work schedule;

e. The place of performance;

f. The agreed total price for the Work to be performed;

g. Submittal requirements;

h. City'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.

5.6.2. 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, 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 establishment of a Job Order Notice to Proceed date. Emergency contact numbers and information shall be provided for all representatives involved in the course of construction.

JOC shall provide a responsible agent who is authorized to execute and sign documents on its behalf to attend the pre-construction conference. In addition, JOC will provide a job superintendent and safety officer to attend.

5.6.3. Traffic Control. All traffic relating to the Project shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City revisions, available at the JOC's request through the City Transportation Division (Transportation) at (480) 350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any other special provisions set forth herein.

At or around the time of the pre-construction conference, the JOC 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 ensure that traffic is carried through the Work area in an effective manner, and that motorists, pedestrians, bicyclists, and workers are protected from hazards including but not limited to, motor vehicle accidents. The City shall designate a representative who will oversee and monitor the JOC's agent and enforce the City's requirements as set forth herein. JOC covenants to give the City any assignment and/or assurances which may be necessary to affect such right of direct enforcement.

JOC is solely responsible for and assumes full liability for the traffic control relating to this Project. The JOC shall submit a traffic control plan to the City for its review and approval no less than one (1) week prior to commencing work under this Contract. Traffic as referenced herein, shall include any and all motor vehicles, bicyclists, and pedestrian traffic on roadways, sidewalks, bicycle paths, alleys and/or rights of way at, attendant to and/or adjacent to the Project.

In the event alteration of traffic control is required for work or services provided herein, alterations shall be made 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. The most restrictive provisions shall apply. The City will

undertake no responsibility or expenses relating to measurement or payment for traffic control. All costs and expenses of measurement or alteration of traffic control shall be included in the Job Order for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any and all revisions relating to traffic and/or traffic control shall be submitted to the City for review and approval in the City's sole discretion.

JOC is solely responsible for any and all loss, damage, replacement or repair necessitated to any traffic signal equipment, traffic signal conduit, and/or circuits, arising from or relating to JOC's Work or services performed hereunder. JOC shall have all repairs performed immediately at its sole expense by a licensed electrical contractor with experience in traffic signal repair, subject to pre-approval by the City. Any and all repairs and/or replacement costs expended by the City in this regard shall be reimbursed by the JOC at twice the City's actual cost.

The JOC shall notify all adjacent or affected residents and/or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk and/or driveway closures or modifications, 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. JOC shall abide by applicable speed limits. Additional information may be obtained by contacting the City Transportation Division at (480) 350-8219.

5.6.4. Clean Up. The JOC agrees and covenants to adequately protect the Work Site, adjacent property and the public in all phases of the Work and/or services provided herein. JOC shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. JOC shall maintain access to all phases of the Project pending inspection by the City or its agent. JOC hereby agrees to the following as to the job Site: continually keep the job Site free from debris, waste and accumulation of materials; immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary; keep machinery clean and free of weeds and debris; remove all construction stains, smears and debris from finished surfaces; perform Site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and, remove all equipment, materials, tools and JOC's personal property prior to submission of final invoice to the City.

JOC shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job Site. Should the JOC fail to respond promptly as set forth herein, the City shall correct the job Site at the expense of the JOC, and recover all attendant costs.

5.6.5. 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 become 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.

5.6.6. Subsidiary Work. All Work called for in the Plans and Specifications shall be performed by the JOC 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.

5.7. Control of Work.

5.7.1. Interpretations of Drawing and Documents. If any JOC 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, or finds discrepancies in or omissions from the Contract, such JOC may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC 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 who shall distribute the addendum to the appropriate Subcontractor(s). The City will not be responsible for any other explanation or interpretations of the documents.

5.7.2. JOC's Representative. The JOC 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's foreman or agent on the Work shall be considered as having been given to the JOC.

5.7.3. 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.

5.7.4. Supervision by JOC. The JOC will supervise and direct the Work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the JOC as the JOC's representative at the Site. The supervisor shall have full authority to act on behalf of the JOC and all communications given to the supervisor shall be as binding as if given to the JOC. 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 and the City.

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

5.7.6. Survey Control Points. Existing survey monuments shall be protected by the JOC or removed and replaced under the direct supervision of the City surveyor or the City surveyor's authorized representatives.

Prior to construction, the JOC shall notify the City surveyor of any survey monuments which need to be referenced off of the monument. Any monuments lost that have not been referenced off due to the JOC's negligence and/or lack of notification to the City surveyor shall be replaced at the JOC'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.

5.7.7. 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, 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 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 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.

5.7.8. Shop Drawings, Schedules and Samples. In time for each to serve its proper purpose and function, the JOC 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 for which the submittal is made. The additional copies received will be returned to the JOC's representative at the job Site. The Engineer's notations of the action 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 job Site Contract, 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 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.

5.7.9. As-Built Plans. The JOC shall provide and maintain accurate field data on a redlined 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, and certified to be complete by the architect/engineer of record.

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

5.7.11. Inspection. The JOC 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 must call for final inspections from the Development Services and Public Works Departments of the City. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

5.7.12. Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC 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.

5.7.13. 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 and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

5.7.14. Completion of the Work. Completion of the Work is full completion of all construction associated with the 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.

5.7.15. Final Acceptance and Guarantee. Final Acceptance shall mean a written Final Acceptance of the Work by the City. The City Engineer shall make the Final Acceptance promptly after the Work has been completed in accordance with the Contract and after inspection is made. The Work performed under this Contract shall be guaranteed by the JOC for a period of one (1) year from the date of Final Acceptance.

5.7.16. Substitution of Subcontractors. The JOC shall not substitute any Subcontractor in place of a Subcontractor listed in its Job Order Proposal except as specifically authorized by the City or pursuant to Arizona law.

5.8. Control of Materials.

5.8.1. Excess Materials. Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC. The JOC 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.

5.8.2. 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 the Contract and it shall be the duty of the JOC 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 as though contained in the original Contract.

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 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 Final Acceptance of the material nor shall it preclude retesting or reinspection at the Site of the Work.

5.9. Legal Regulations and Responsibilities to Public.

5.9.1. Conflict of Interest. This Contract is subject to cancellation under the provisions of A.R.S. § 38-511.

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

5.9.3. Non-Discrimination. City is an equal opportunity, affirmative action employer. JOC hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. JOC covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. In addition, JOC agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act and the Fair and Legal Employment Act and all laws, rules and regulations attendant thereto. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

The JOC 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 this clause.

5.9.4. 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 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 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 haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC 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 Transportation Division. Prior to submittal, the JOC should contact Engineering Services for complete details for issuance of the City haul permit.

5.9.5. Environmental Requirements.

a. JOC covenants and agrees that it shall, at all times during the term of the Contract, and at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of or operations at the Project Site by JOC, its agents, assigns and/or employees. JOC agrees that should it or any of its agents, assigns or employees know of (a) any violation of environmental laws relating to the Project Site, or (b) the escape, release or threatened release of any hazardous materials in, on, under or about the Project Site, JOC shall promptly notify the City in writing of such, and that it will provide all warnings of exposure to hazardous materials in, on, under or about the Project Site in strict compliance with all applicable environmental laws. Further, JOC covenants and agrees that it shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on under or about the Project Site, any hazardous materials, or permit or allow any of its agents, assigns or employees to do so. Prior to use of the Project Site the JOC shall provide the City an inventory of all equipment and materials stored and/or to be stored at the Project Site.

b. For purposes of this Contract, hazardous materials shall include but is not limited to, any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any environmental laws, including without limitation, any (a) substance defined as a "hazardous substance", "extremely hazardous substance", "hazardous material", "hazardous chemical", "hazardous waste", "toxic substance" or "air pollutant" by federal laws, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., and all amendments thereto, or other similar governmental restrictions; and (b) any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, injurious by itself or in combination with other materials; (ii) is

controlled, designated in or governed by any hazardous materials laws; (iii) gives rise to any reporting, notice or publication requirements under any hazardous materials laws; or (iv) gives rise to any liability, responsibility or duty on the part of the City or JOC with respect to any third person under any hazardous materials laws.

In addition, JOC must comply with the following requirements:

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

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

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

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

e. 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.

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

g. City refuse roll-off containers shall be used on City projects. Please contact the City, acting sanitation supervisor, with any questions.

h. 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.

i. The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume at or around the identified area(s) until approved by the Engineer.

j. 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.

5.9.6. Safety Requirements. The JOC shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements including but not limited to, the Federal Occupational Safety and Health Act of 1970 (29 U.S. § 651 et seq.), and all rules, regulations, and orders adopted pursuant thereto. In addition, the following requirements are applicable for City construction projects.

5.9.7. Briefing. The JOC will be required to attend a City safety briefing. The safety briefing session shall address the following City safety rules and expectations:

a. Contractor Tailgates. JOC shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.

b. Accident/Injury/Illness Procedures. The City's Construction Manager and the Risk Management Division shall be contacted within twenty-four (24) hours, upon the occurrence of any accident, injury or illness on the Project.

c. Unsafe Acts. JOC employees shall take any and all reasonable acts to stop an unsafe act or condition at the Project Site.

d. Safety Audits. The City reserves the right to conduct safety audits at the job Site at any time. In addition, JOC shall immediately notify the City should an OSHA inspection occur at a Project Site.

e. Job and Site Specific Requirements. JOC shall comply with all site specific requirements such as lockout/tagout rules and evacuation plans, which shall be covered during safety briefing(s) by the City.

If applicable to the Project JOC shall:

a. 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 implementing a confined space program, JOC shall 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, JOC shall provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be included in each agenda of 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 obtain copies of all agendas, minutes of the meetings, and documentation of any safety tailgate meetings held regarding the Project Site.

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

No additional payment by the City will be made to JOC or its subcontractor for temporary barricades.

5.9.9. Protection of Finished or Partially Finished Work. The JOC 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 completed Work shall not release the JOC from responsibility prior to City's acceptance, but JOC shall turn over the entire Work in full in accordance with the Specifications before final payment will be made.

5.9.10. Blue Stake. The JOC is required to notify Arizona Blue Stake, Inc. at (602) 263-1100 or otherwise first determine whether underground facilities will be encountered, and if so where they are located from each and every underground facilities operator and taking measures for control of the facilities in a careful and prudent manner, prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21, et seq. The JOC shall contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities prior to undertaking any Work.

5.9.11. Salt River Project Construction Clearance Agreement. Salt River Project requires JOC if working on its facilities, to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. JOC shall execute the Construction Clearance Agreement with Salt River Project, if required, and furnish a copy to the City prior to proceeding with any construction on Salt River Project facilities. 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 JOC 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.

5.9.12. Notification of Property Owners. JOC shall notify all property owners that may be affected by the proposed construction activities of the scope and duration of the construction activities prior to start of any Work or construction.

5.9.13. Access. JOC shall maintain public access to adjacent businesses of the Project Site 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, access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained by the JOC during all non-working hours.

5.9.14. Protection of Existing Facilities. The JOC shall protect all existing facilities during construction or Work. Utility poles that may be affected by construction activities shall be protected and/or braced by the JOC. The JOC shall notify the appropriate utility company or agency of any construction or Work that may affect its facilities and state the course of action which will be taken to protect same.

5.9.15. Storm Water Pollution Prevention Plan and AZPDES Permit. JOC shall secure a General Permit, if required, pursuant to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. JOC 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 and as set forth pursuant to 18 A.A.C. 9 Art 9. The AZPDES construction general permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from the City Engineering Division and at www.adeq.state.az.us/environ/water/permits/links.html.

The JOC shall complete and submit the following documents to the City for any Job Order that qualifies for this provision prior to undertaking any Work:

a. 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.

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

c. 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 shall submit completed and signed NOI forms prior to receipt of the 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 shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the JOC (or any of its 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 JOC will not be entitled to any claim for additional compensation or costs resulting from such a delay in the construction start date. The NOI shall be posted on the Project Site along with the SWPPP.

JOC shall perform inspections of all stormwater pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The JOC is responsible for maintaining those devices in proper working order, including cleaning and/or repair.

The JOC, as the permittee of construction activities with stormwater discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality. 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.

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

Upon total project completion, acceptance, and de-mobilization, JOC shall submit it's 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, including all 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 JOC is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include JOC's 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.

5.10. Commencement, Prosecution and Progress.

5.10.1. Time is of the Essence. All time limits specified in this Contract are of the essence to the Contract.

5.10.2. Start of Work. Work shall start as soon as practical, and in no case later than seven (7) calendar days after the issuance of the Notice to Proceed for each Job Order by the City, and shall be completed within the Contract Completion Date.

5.10.3. 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 take into account anticipated or actual 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.

5.10.4. JOC's Construction Schedule. Prior to the start of Work, JOC shall provide the City with a construction progress schedule for all Project(s) and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be produced by the JOC with the submission of each monthly pay request to the City.

5.10.5. Hindrances and Delays. Except as provided herein, no charge shall be made by the JOC for hindrances or delays from any cause during the progress of any portion of the Work set forth in this Contract; but such delays, if due to no fault or neglect of the JOC, may entitle the JOC to a time extension sufficient to compensate for the delays. The amount of the time extension, if any, shall be determined by the Engineer provided the JOC gives the Engineer immediate notice in writing of the cause of such delay.

The parties agree to negotiate in good faith for the recovery of damages related to expenses incurred by the JOC for a delay for which the City is solely responsible which is unreasonable under the circumstances; and which delay was not within the contemplation of the parties to the Contract at the time the Contract was entered into, and,

a. Unless specifically provided for herein, 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.

b. This section shall not be construed to void any provisions of this Contract, which require notice of delays, which provide for alternative

dispute resolution, other procedures for settlement, or which provide for liquidated damages.

However, if the parties can reach no agreement for the recovery of damages as set forth herein, the determination of the City shall be final.

5.10.6. 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.

5.10.7. 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.

5.10.8. 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 each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

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

5.10.10. 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.

5.10.11. 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.

5.10.12. 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.

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

5.10.14. 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. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC and not for the benefit of any other party.

5.10.15. Cooperation and Further Documentation. The JOC 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.

5.10.16. 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.

5.10.17. Patented and Copyright Materials; Property Rights. JOC shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used or incorporated into the Project and agrees to hold harmless, defend and indemnify the City, its officers, employees, representatives and agents, from all suits, actions or claims for or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes. Nothing herein shall be construed as vesting in the JOC any property right, including but not limited to intellectual property rights, in the materials or equipment after completion of the Project. All such materials and equipment shall become the property of the City upon completion of the Project, and the JOC warrants and represents that all such property shall pass to the City free and clear of all liens, claims, security interests or encumbrances.

5.11. Measurements and Payments.

5.11.1. Contract Price Adjustments. Any 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:

a. Unit prices set forth in the Job Order or as subsequently approved by the City;

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

c. Costs, fees and any other markups, upon approval by the City.

Any increases on such changes shall not exceed those delineated in the approved Job Order.

If an increase or decrease cannot be agreed to by the City as set forth in items (a) through (c), 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 shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

If the City and the JOC disagree upon whether the JOC 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 shall resolve the disagreement pursuant to MAG Specification 110.

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

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

5.11.2. Record Keeping and Finance Controls. Records of the JOC's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC shall be kept on a generally accepted accounting basis. City reserves the right to inspect any and all records relating to the Project.

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

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

The JOC shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract 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 records relating to the Project to verify the accuracy and appropriateness of pricing data.

5.11.3. Payments by City. Payments by the City pursuant to A.R.S. § 34-221 et seq., shall be in the form of monthly progress payments to JOC upon approval of duly certified and approved estimate(s) of the Work performed during the preceding calendar month under the Contract. Payment may include funds for material and equipment. Said payments shall be made on or before fourteen (14) days after the estimate of the Work by JOC is certified and approved by the City. Upon fifty percent (50%) completion of the Project Work, one-half (1/2) of the retained amount shall be paid to the JOC upon JOC's request, provided JOC is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained, as determined by the City. Notwithstanding the foregoing, City reserves the right to retain ten percent (10%) of the amount of each estimate until final completion and acceptance of all material, Work and equipment covered by the Contract. In addition, the City shall withhold an amount from any progress payment sufficient to pay expenses the City reasonably expects to incur in correcting any deficiencies in JOC's Work under the Contract. In any event, the City shall retain ten percent (10%) of all Work estimates as guarantee for complete performance of the Contract. Upon final completion and acceptance of the Work by the City, JOC shall be paid within sixty (60) days after JOC's filing of notice of completion.

5.11.4. Payments by Contractor. In accordance with A.R.S. § 34-221(G), JOC agrees to promptly pay all Subcontractors within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Subcontractor or subordinate Subcontractors, on account of the Work performed by each to the extent of each such Subcontractor's interest therein, except that no contract for construction may materially alter the rights of any Subcontractor or material supplier to receive prompt and timely payment.

5.11.5. 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 further agrees that the City 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 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 JOC from any of the obligations or liabilities hereunder, or entitle JOC to any damages or compensation except as may be provided for in this Contract.

6. SPECIAL PROVISIONS

6.1. Key Contacts.

City Engineering (Project Manager)	(480) 350-2921
City Engineering	(480) 350-8200
Blue Stake	(602) 263-1100

6.2. 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, if necessary, will be paid for by the City.

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

The duration of 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.

6.4. Confidentiality of Plans and Specifications. Any Plans or Specifications the JOC receives regarding this project are for official use only. The JOC 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 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's Contract with the City of Tempe".

6.5. Irrigation and Landscape Repair. The JOC 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 JOC meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

6.6. Sequence of Construction. The JOC shall submit a project sequencing schedule to the City Engineer for review at the pre-construction conference. The JOC is on

notice that the City will review the proposed schedule to insure limited community impact.

6.7. Coordination with Other Contractors. Coordination between contractors may be required. Should the JOC 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's performance of the Work at the Site be made by any separate contractor against the JOC, Design Engineer, or Construction Manager or any other person, JOC shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC shall, to the fullest extent permitted by laws and regulations, defend, indemnify and hold City, 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 City, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC's performance of the Work.

Should a separate contractor cause damage to the work or property of JOC or should the performance of work by any separate contractor at the Site give rise to any other claim, JOC shall not institute any action, legal or equitable against City, 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 City, 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 is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and City and JOC are unable to agree as to the extent of any adjustment in completion time attributed thereto, JOC may make a claim for an extension of time. An extension of the completion time shall be JOC's exclusive remedy with respect to City, 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.

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

FOR

GENERAL CONSTRUCTION SERVICES

ForeSite Design & Construction, Inc.

CITY COUNCILMEMBERS

Mayor – Hugh Hallman

Mark Mitchell	P. Ben Arredondo
Joel Navarro	Onnie Shekerjian
Shana Ellis	Corey Woods

2008

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

NOTICE TO JOB ORDER CONTRACTOR

Each Job Order proposal by the Job Order Contractor ("JOC") 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 2008 Uniform Standard Details for Public Works Construction and 2008 Uniform Standard Specifications for Public Works Construction, (collectively "MAG Specifications") and the City of Tempe Supplements, thereto except as otherwise set forth in the Contract.

The JOC 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, JOC is required to submit an affidavit certifying that it and all of its subcontractors, defined as doing work in excess of Thirty Thousand Dollars ($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 health insurance to employees for its eligible dependents.

Work shall not start until after the date of issuance of a Job Order Notice to Proceed by the City of Tempe ("City") and shall be completed within the number of calendar days shown in the Job Order. PLEASE BE ADVISED THAT SUBSTANTIAL COMPLETION OF THE WORK IS NOT THE SAME AS COMPLETION OF THE WORK.

The City reserves the right to reject the JOC's proposal.

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

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

7/2/08
Date

CONTRACT

THIS CONTRACT is made and entered into this 22nd day of July, 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 ("City"), and ForeSite Design & Construction, Inc., an Arizona corporation, ("JOC").

RECITALS

I. The City intends to have a number of projects ("Project") which will be constructed as Job Orders.

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

NOW THEREFORE, each party, for and in consideration of the mutual covenants and agreements herein contained, hereby agrees as follows:

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.

1.1. **"Addendum"** means a document issued by the City during the bidding period that modifies or supersedes portions of the Contract as to additional specifications, forms or other information.

1.2. **"Alternate Systems Evaluations"** means alternatives for design, means and methods or other scope considerations that are evaluated by the City using value engineering principles for a potential reduction of construction costs of a quality and functional Project per City requirements.

1.3. **"Amendment"** means a written modification of the terms of this Contract signed by an authorized agent of the City.

1.4. **"Award"** means the formal action of the City Council to accept a Contract.

1.5. **"Business Day"** means any calendar day except for Saturdays, Sundays and holidays observed by the City.

1.6. **"Change Order"** means a written agreement entered into after the award of the Job Order that alters or amends the Job Order.

1.7. **"City"** means the City of Tempe, a public body or authority and municipal corporation, with whom the JOC has entered into this Contract and for whom the services are to be provided pursuant to this Contract.

1.8. **"City's Contingency"** means a fund to cover cost growth during the Contract Term used at the sole discretion of the City for anticipated costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen Site conditions.

1.9. **"Construction Fee"** means the JOC's total administrative costs, including home office overhead if any, and profit, whether at the JOC's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are provided in the General Conditions sections of the Contract, construction phase, set forth herein.

1.10. **"Construction Manager Professional"** means 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.

1.11. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by the City and JOC covering the Job Order Construction Services. The Contract collectively represents the entire agreement between the City and the JOC, and which supersedes any prior negotiations, representations or agreements, either written or oral.

1.12. **"Contractor"** means the individual, firm, or corporation, its successors and assigns, that enters into a contract with the City.

1.13. **Contractor's Contingency"** or **"JOC's Contingency"** means a fund to cover non-general conditions cost growth during the Project used subject to City's approval in its sole discretion, generally utilized for costs that result from Project circumstances. The JOC's Contingency or Contractor's Contingency shall not be used for General Conditions Costs.

1.14. **"Contract Price"** means the dollar amount(s) set forth in this Contract for the Contract Term, subject to modification only upon prior written approval by the City.

1.15. **"Contract Services"** means all labor, services, work, materials and other incidentals of the scope of Work required by the Contract to complete a Job Order.

1.16. **"Contract Term"** means the term of this Contract from the Effective Date set forth herein to the completion date or date of termination by the City.

1.17. **"Cost of the Work"** means the direct costs necessarily incurred by the JOC 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's construction fee, general conditions fee, taxes, bonds, or insurance costs.

1.18. **"Cost Model"** means a breakdown of the scope of the Project that is initially developed by the JOC during the conceptual Design Phase and based on information from the Project Team and the JOC's records of similar projects. The model will evolve as the design progresses, be maintained by the JOC throughout the Design Phase and will include any assumptions and clarifications made by the JOC. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The Cost Model is subject to approval by the City in its sole discretion.

1.19. **"Day(s)"** means calendar day(s) unless otherwise expressly stated herein.

1.20. **"Deliverables"** means the Work products prepared by the JOC in performing the scope of Work described in the Contract. Some of the major deliverables to be prepared and provided by the JOC 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.

1.21. **"Design Engineer"** means the person, firm or corporation having a contract with the City to furnish design services for this Project.

1.22. **"Design Engineer's Consultant"** means a person, firm, entity 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.

1.23. **"Design Phase"** means the designated period of time in which Design Services are performed for required features, functions, characteristics, qualities and/or properties for the Project, occurring either sequentially or concurrently with the construction of the Project.

1.24. **"Design Professional"** means a qualified, licensed design professional who furnishes design and/or construction administration services required under the Job Order, including but not limited to, architect, engineer and/or landscape architect.

1.25. **"Differing Site Conditions"** means concealed, 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.

1.26. **"Duration of the Work"** means the number of days from a Job Order Notice to Proceed to Substantial Completion.

1.27. **"Effective Date of this Contract"** means 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 parties signs this Contract.

1.28. **"Engineer"** means the City Engineer acting directly or through its duly authorized representative.

1.29. **"Final Acceptance"** means the approval and acceptance by the City of the scope of work set forth herein, following completion of a Job Order by the JOC as prescribed in each Job Order.

1.30. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of the JOC during the construction phase, including but not limited to: 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 or subcontractors; and fees for permits and licenses.

1.31. **"Guaranteed Maximum Price (GMP) Proposals"** means the offer of a proposal detailing the qualifications, assumptions, exclusions, value engineering and any and all other requirements set forth in the scope of Work for the Job Order.

1.32. **"JOC"** means firm or entity selected by the City to provide or procure construction and design services as detailed in this Contract.

1.33. **"JOC Payment Request"** means the form used by the JOC to request progress payments by the City for Work and/or services completed under certain Job Orders in accordance with this Contract. JOC Payment Requests are subject to the City's review and approval, in its sole discretion.

1.34. **"JOC's Representative"** means the person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.35. **"JOC's Senior Representative"** means the highest ranking person acting directly for the JOC or its duly authorized representative as described in each Job Order.

1.36. **"Job Order"** means a firm, fixed price, competitively bid, indefinite quantity type Contract designed to accomplish small to medium, multi-traded maintenance, repair and minor new construction projects for the City. The Job Order may include a Job Order Price, Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order may also include plans, technical specifications, special provisions and the JOC's proposal either by reference or inclusion.

1.37. **"Job Order Price"** means the sum of the maximum cost of the Work that can be ordered during the initial term of the Contract, including but not limited to, the construction price of the JOC(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's contingency, if any, pursuant to this Contract. The approved Job Order Price will be made a material provision of this Contract upon execution of the Job Order.

1.38. **"Job Order Time"** means the time from the issuance of a Job Order Notice to Proceed by the City to the City's approval of JOC's Substantial Completion. A Job Order Time shall be incorporated into this Contract upon execution of each Job Order.

1.39. **"Laws and Regulations"** means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all federal, state, and local governmental bodies, agencies, authorities and courts having jurisdiction over the subject Project, Site, and/or any Work pursuant to this Contract.

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

1.41. **"MAG Specifications"** means Maricopa Association of Governments 2008 Uniform Standard Details for Public Works Construction and 2008 Uniform Standard Specifications for Public Works Construction, latest editions, and the City of Tempe Supplement thereto. All Work done under this Contract shall be accomplished in accordance with the MAG Specifications except as specifically modified herein. In the event of any conflict between the Contract and the requirements of the MAG Specifications, the Contract shall prevail.

1.42. **"Miscellaneous Removal and Relocations"** means 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 that may require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, are included in this category.

1.43. **"Notice of Award"** means the written notice by the City to the JOC stating that upon compliance by the JOC with the conditions precedent enumerated therein, within the time specified, the City anticipates the execution of this Contract.

1.44. **"Notice to Proceed"** means written notification from the City to the JOC establishing the date on which performance of the JOC's obligations under this Contract shall begin.

1.45. **"Plans"** means documents setting forth visual representations of the scope, extent and character of the Work to be furnished and performed by the JOC during the construction phase of the Project, and which have been prepared and approved by

the Design Engineer for the City. This definition includes Plans that have reached a sufficient stage of completion as determined by the City, and that have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or bidability 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 specifically excluded from this definition.

1.46. **"Product Data"** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the JOC to illustrate materials or equipment for any portion of the Work.

1.47. **"Project"** means the total design and construction of improvements, or services and/or Work to be performed by the JOC Contractor pursuant to an express fixed-price Job Order.

1.48. **"Project Team"** means a construction services unit consisting of a Design Professional, JOC, the City (Water Utilities Department representatives, design project manager, construction project manager), Construction Manager Professional and other persons who are responsible for making decisions regarding the Project, as approved by the City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by the City.

1.49. **"Record Documents"** means any and all data storage medium(s), including but not limited to, any and all documents, memoranda, minutes, contracts, agreements, accounting data, as-built documents, operations and maintenance manuals, project manuals, and specifications created pursuant to or relating to this Contract. Record Documents shall be kept for a period of five (5) years following the close of each calendar year of the Contract Term and any renewals thereof, and JOC shall keep full and accurate books of account relative to transactions relating to the Contract, in accordance with generally accepted accounting principles.

1.50. **"Samples"** means physical examples of materials, equipment or workmanship representative of a part of the construction phase establishing the standards by which that portion of the construction phase Work will be evaluated.

1.51. **"Shop Drawings"** means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the JOC and submitted by the JOC to the City to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.

1.52. **"Site"** means the land, area or premises where the Project Work and Services shall be undertaken and/or completed, or upon which the subject project of a Job Order is located.

1.53. **"Specifications"** means the technical specifications for the construction phase of this Project consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and

administrative details applicable thereto.

1.54. **"Subcontractor or Subconsultant"** means an individual, firm, entity or corporation other than JOC's employees, having a contract with the JOC to undertake to perform a part or portion of the Design Phase services or construction phase Work at the Site for which the JOC is responsible.

1.55. **"Substantial Completion"** means when the Work, or a significant portion of the Work as determined by the City, is sufficiently completed so that the City, in its sole discretion, can occupy and use the Project Site for its intended purposes.

1.56. **"Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with JOC or with any Subcontractor to furnish materials or equipment.

1.57. **"Total Float"** means 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, as determined by the City.

1.58. **"Work"** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction, design and/or repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

2. SCOPE OF THE WORK

2.1. The JOC shall furnish any and all plant, materials, labor, construction equipment, services and transportation at JOC's sole cost and expense (all applicable taxes included) required for performing all Work specified in the Job Order, upon issuance of a Notice to Proceed by the City. JOC's Work shall include but shall not be limited to all improvements, fixtures, equipment and personal property necessary for JOC to complete the Work as specified therein.

2.2. JOC shall perform the Work, construct the same and install the materials as set forth herein for the City strictly in accordance with all applicable laws, ordinances, rules or regulations of any public authority with jurisdiction over the Project or Site, in a good and workmanlike, and substantial manner and diligently performed until completion, to the satisfaction of the City or properly authorized agents, in strict conformity with the Contract, and any modifications thereto.

2.3. Minor design services may be required for some Job Orders. For those Job Orders that may require design services the JOC shall seek the services of a licensed professional, registered in the State of Arizona, to prepare plans for permitting.

2.4. All documents prepared by the Design Professional are subject to review and approval by the City in its sole discretion. Review and/or approval by the City does not relieve the Design Professional from any professional liability associated with the documents.

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

3. CONTRACT PRICE AND JOB ORDER PRICE

3.1. Contract Price. This Contract will have a maximum dollar amount of Four Million Dollars ($4,000,000).

3.2. Job Order Price. Each Job Order under this Contract shall not exceed Six Hundred Thousand Dollars ($600,000) in construction costs, in the City's discretion. In no event will any Job Order exceed One Million Dollars ($1,000,000).

3.2.1. No changes, modifications or alterations to the Job Order shall be made without the prior written consent of the City. Unless otherwise provided in the Contract, each Job Order price shall 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, or which may be assessed during the term of the Contract.

3.2.2. Any additional costs including increased fees for architectural, engineering and other similar services arising by reason of any change, modification or alteration of the Job Order, additional construction costs or other expenses and/or damages incurred or suffered by the City as a result of or relating to JOC's delay or alteration(s) of the work performed under the Job Order, shall be at the sole cost and expense of JOC.

3.2.3. The amount of any contingency will be negotiated as a separate line item in each Job Order and shall not be modified except by City approval. The JOC will inform the City of use of contingency funds immediately upon use, by way of revising the schedule of values in the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on the schedule of values where the increased funds were used. If the contingency funds are used for a new line item that was not given with the original Schedule of Values, JOC will so indicate. At the time that contingency funds are used by JOC, applicable markups for overhead and profit will be applied. When all funds in the City's Contingency are expended, the JOC then is at risk to and shall be solely responsible for any additional increases in project costs for the scope of work described in the Contract and Job Order.

3.3. Procedure for Approval. The procedure for approval of Job Order price modifications is as follows:

Proposed Job Order price modifications shall be submitted in the following format:

Price of Subcontractor(s)	$ _____
Price of Subconsultant(s) (If applicable)	$ _____
General Conditions	$ _____
Preconstruction Labor (If applicable)	$ _____
Construction Labor	$ _____
Subtotal	$ _____
Overhead and Profit (per Table 1)	$ _____
Total	$ _____
Insurance	$ _____
Bonds	$ _____
Sales Tax	$ _____
Combined Total	$ _____
JOC's Contingency	$ _____
City's Contingency	$ _____

3.4. Overhead and Profit Multiplier. Table 1 indicates the overhead and profit multiplier which shall be applied to a Job Order. The sum of the Combined Total with the JOC'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

	$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	1.12	1.10	1.08	1.07	1.06

3.5. Percentages for Job Order. The insurance percentage, bond percentage, and sales taxes percentage for each Job Order is as follows:

Insurance Percentage:	1.79%
Bonds (Performance and Payment)	0.95%
Sales Tax Percentage	5.265%

3.6. JOC Guarantee for Job Order Price. The JOC guarantees to bring each Job Order within the specified Job Order Price. Any and all other costs, expenses and/or damages incurred or suffered shall be at the sole cost and expense of the JOC.

3.7. Scope Conference. Prior to commencement of Work, a scope conference will be scheduled with the City to define design and construction services required of the JOC. The Job Order and related documents will be provided to the JOC by the City.

3.8. Submission of Proposal. The JOC will promptly submit a proposal with the Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order to the City for approval, based on the scope meeting and the provided documents. The City will review any submitted proposal. Upon City's approval of said proposal, the City and JOC agree to negotiate in good faith and, as expeditiously as possible, agree upon the Job Order price and the Duration of the Work. If no agreement can be reached, the City reserves the right to limit or reject outright any submitted proposal. Should the parties concur on the Job Order price and Duration of Work, the parties shall execute the Job Order reflecting its specific terms.

4. TIME OF COMPLETION

The JOC further covenants and agrees at its sole cost and expense, to perform all Work and furnish all plant, materials, labor, construction equipment, services and transportation for performance of all Work for the construction of each Job Order agreed to pursuant to this Contract and to construct 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. See Section 5.4.14 Completion of the Work, herein.

4.1. Contract Term. The effective date of this Contract shall be July 22, 2008. The Contract Term shall commence following issuance of a Notice to Proceed by the City for this Contract. This Contract shall be in effect for a twelve (12) month period, or until the Contract Price has been expended by the City pursuant to this Contract, which ever occurs first, with an option by the City to renew the Contract for a twelve (12) month period or the balance of the Contract Price. In no event shall the Contract Term exceed three (3) years from its effective date.

The option to renew may be exercised by the City in the City's sole discretion. Such determination may be based on the JOC's successful performance under the Contract and the needs of the City as determined in the City's sole discretion.

4.2. Job Order Time. Job Orders may be issued at any time during the duration of this Contract by the City.

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

4.2.2. JOC agrees and covenants that it will commence performance of the Work and achieve completion of the Work within the Job Order Time.

4.2.3. Each Job Order Time shall be subject to adjustment in the City's sole discretion in accordance with this Contract.

4.3. Substantial Completion. Generally, the City will not approve Substantial Completion of buildings and/or building improvements. If the City determines that approval of Substantial Completion is necessary, said approval will be made in

the City's sole discretion. Substantial Completion of buildings and/or building improvements shall include: (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 representative thereof; (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 thirty (30) days prior to projected Substantial Completion.

For buildings and other projects, Substantial Completion as determined by the City, may also include: (a) elevator permits; (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/or, (e) final cleaning and remediation.

5. GENERAL PROVISIONS

5.1. JOC Requirements and Conditions.

5.1.1. Licenses. A Contract shall not be awarded to a Bidder who is not properly licensed. Prior to execution of this Contract, the JOC must obtain a valid City Transaction Privilege License at its sole expense and shall provide the Permit Number of such for validation to the City. JOC must carry the appropriate State of Arizona Contractor License at all times during the Contract Term.

JOC, at its sole cost, shall obtain all required governmental permits and approvals for all work and services performed hereunder.

Any and all Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed Work at the time of submission of a Job Order proposal. If the Subcontractor does not have the appropriate license, the City reserves the right to reject any or all of the Job Order proposal.

5.1.2. Examination of Premises. The JOC shall visit the Site of each Job Order and shall fully acquaint itself with all 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 to obtain, receive or examine any addenda to the proposed Contract, 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 agrees that it has examined the Site, Specifications and other Contract documents and accepts, without recourse, all Site conditions and the proposed Contract and all exhibits and addenda thereto.

5.1.3. Government Approvals and Permits.

a. Unless otherwise provided, JOC shall 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 at its sole expense. JOC expressly covenants and agrees that it will obtain any and all necessary environmental permits and/or file the necessary environmental notices at its cost prior to undertaking Work or performing services hereunder.

b. Copies of all permits and notices must be provided to the City's representative prior to starting any Work or performing services pursuant to 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.

c. The City agrees to be responsible for the City's own review and permit(s) fees for building and demolition permits only. In addition, the City shall bear its own review fees for grading and drainage, water, sewer, and landscaping. The City may agree to pay utility design fees for permanent services in its sole discretion. JOC shall be solely responsible for any and all other permit(s) and review fees not specifically designated herein.

d. JOC is responsible for all costs of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until completion of the Project. Arrangements for water at the Site or for construction purposes are the JOC's sole responsibility.

5.2. Award and Execution of Contract.

5.2.1. Execution of Contract. Except as provided herein to the contrary, the respective rights and remedies of the parties to this Contract shall be cumulative and in addition to any rights and remedies not specified in this Contract. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Contract and that this Contract supersedes any and all prior negotiations, arrangements, representations and understandings between the parties. No provision of this Contract may be amended except by an agreement in writing signed by the City. This Contract, including exhibits, attachments and schedules attached hereto, signed by the City and JOC covering the Job Order Construction Services, constitutes the entire agreement between the parties and shall be effective upon the date set forth herein. JOC shall execute the Contract, counterparts permitted, within ten (10) calendar days after formal Notice of Award of Contract by the City. Failure to execute this Contract and file satisfactory contract bonds and insurance certificates as provided herein within ten (10) calendar days after the date of Notice of Award is issued shall result in cancellation of the award and this Contract may be voided at the option of the City.

5.2.2. JOC Insurance and Bond Rating Requirements. JOC shall execute a bond for any and all work or services performed hereto, in accordance with A.R.S. § 34-211. 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.

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.

Prior to execution of each individual Job Order, the JOC shall provide a performance bond and a payment bond, each in an amount equal to the full amount (100%) of the price for each Job Order, in accordance with A.R.S. § 34-211.

5.2.3. Insurance Requirements. The JOC'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 shall furnish the City with certificates of insurance to verify each policy and compliance with the required coverages, conditions, and limits, and confirmation that each policy is in full force and effect. Such certificates shall identify the Project number herein and shall provide for not less than thirty (30) days advance written notice by certified mail of any event of cancellation or termination of such coverage(s).

Failure, neglect or refusal to secure and maintain insurance policies as set forth herein or to provide copies of policies or certificates, including renewal policies or certificates within the time specified herein shall result in termination of the Contract. Should the Project include construction of an improvement to an existing structure, builders risk insurance shall be obtained by JOC for the full amount of the Contract Price, in accordance with MAG Specification 103.6C.

5.2.4. Health Insurance Requirements. JOC who enters into a Contract with a Contract Price in excess of Thirty Thousand Dollars ($30,000) with the City must certify that it has, 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 and provided to the City in the form included herein (page AFF-2). All

required health insurance must be maintained during the entire time of the Contract.

Health insurance is required for all JOC and 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 (24) hour period, regardless of number of hours that the individual is paid. 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 Project, including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City 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 entity 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.

JOC and all Subcontractors subject to the health insurance requirements shall post, in English, notice of the health insurance requirements at its office and at the job Site. Signs for posting will be provided by the City upon request at the pre-construction conference or with a copy of the executed Contract.

5.3. Default: If JOC should default in the performance if its obligations under this Contract, the City shall provide written notice of the default to JOC and JOC shall have a reasonable time in which to cure the default, but in no event shall such time exceed thirty (30) days, without prior approval of the City, following receipt of City's written notification. If JOC fails to cure the condition as required within the time period, or if the default condition continues in violation of this Contract, City shall be entitled to remedy the default using any and all rights and remedies at law or in equity, in its reasonable discretion, including but not limited to, bringing a suit or proceeding to enforce the provisions of the Contract.

5.4. Termination. The City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, pursuant to A.R.S. §38-511, or abandon any portion of the

project for which services have not been fully and/or properly performed by the JOC. Termination shall be commenced by delivery of written notice to JOC by the City personally or by certified mail, return receipt requested. Upon notice of termination, JOC shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. JOC shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that JOC could reasonably have avoided.

5.5. Indemnification. To the fullest extent permitted by law, JOC shall defend, indemnify and hold City harmless, including City's agents, officers, assigns, officials and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of or alleged to have resulted from any negligent acts, errors, mistakes or omissions in the work or services performed by JOC and its agents, employees, subcontractors or assigns, for whom JOC may be deemed responsible, relating to any goods, services or materials arising from or relating to any term or covenant of this Contract. The amount and type of insurance coverage required of JOC as set forth herein will in no way be construed as limiting the scope of JOC's duties to indemnify the City. This provision shall survive the Contract Term.

5.6. Job Order Scope of Work.

5.6.1. Description of Work. The proposed work will be expressly defined by and within each Job Order. Job Orders shall be prepared and submitted in accordance with the requirements specified in this Contract and shall set forth, with the necessary particularity, the following:

a. Contract number along with JOC'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 City, a Work schedule;

e. The place of performance;

f. The agreed total price for the Work to be performed;

g. Submittal requirements;

h. City'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.

5.6.2. 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, 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 establishment of a Job Order Notice to Proceed date. Emergency contact numbers and information shall be provided for all representatives involved in the course of construction.

JOC shall provide a responsible agent who is authorized to execute and sign documents on its behalf to attend the pre-construction conference. In addition, JOC will provide a job superintendent and safety officer to attend.

5.6.3. Traffic Control. All traffic relating to the Project shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City revisions, available at the JOC's request through the City Transportation Division (Transportation) at (480) 350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any other special provisions set forth herein.

At or around the time of the pre-construction conference, the JOC 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 ensure that traffic is carried through the Work area in an effective manner, and that motorists, pedestrians, bicyclists, and workers are protected from hazards including but not limited to, motor vehicle accidents. The City shall designate a representative who will oversee and monitor the JOC's agent and enforce the City's requirements as set forth herein. JOC covenants to give the City any assignment and/or assurances which may be necessary to affect such right of direct enforcement.

JOC is solely responsible for and assumes full liability for the traffic control relating to this Project. The JOC shall submit a traffic control plan to the City for its review and approval no less than one (1) week prior to commencing work under this Contract. Traffic as referenced herein, shall include any and all motor vehicles, bicyclists, and pedestrian traffic on roadways, sidewalks, bicycle paths, alleys and/or rights of way at, attendant to and/or adjacent to the Project.

In the event alteration of traffic control is required for work or services provided herein, alterations shall be made 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. The most restrictive provisions shall apply. The City will undertake no responsibility or expenses relating to measurement or

payment for traffic control. All costs and expenses of measurement or alteration of traffic control shall be included in the Job Order for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any and all revisions relating to traffic and/or traffic control shall be submitted to the City for review and approval in the City's sole discretion.

JOC is solely responsible for any and all loss, damage, replacement or repair necessitated to any traffic signal equipment, traffic signal conduit, and/or circuits, arising from or relating to JOC's Work or services performed hereunder. JOC shall have all repairs performed immediately at its sole expense by a licensed electrical contractor with experience in traffic signal repair, subject to pre-approval by the City. Any and all repairs and/or replacement costs expended by the City in this regard shall be reimbursed by the JOC at twice the City's actual cost.

The JOC shall notify all adjacent or affected residents and/or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk and/or driveway closures or modifications, 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. JOC shall abide by applicable speed limits. Additional information may be obtained by contacting the City Transportation Division at (480) 350-8219.

5.6.4. Clean Up. The JOC agrees and covenants to adequately protect the Work Site, adjacent property and the public in all phases of the Work and/or services provided herein. JOC shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. JOC shall maintain access to all phases of the Project pending inspection by the City or its agent. JOC hereby agrees to the following as to the job Site: continually keep the job Site free from debris, waste and accumulation of materials; immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary; keep machinery clean and free of weeds and debris; remove all construction stains, smears and debris from finished surfaces; perform Site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and, remove all equipment, materials, tools and JOC's personal property prior to submission of final invoice to the City.

JOC shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job Site. Should the JOC fail to respond promptly as set forth herein, the City shall correct the job Site at the expense of the JOC, and recover all attendant costs.

5.6.5. 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 become 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.

5.6.6. Subsidiary Work. All Work called for in the Plans and Specifications shall be performed by the JOC 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.

5.7. Control of Work.

5.7.1. Interpretations of Drawing and Documents. If any JOC 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, or finds discrepancies in or omissions from the Contract, such JOC may submit to the Engineer a written request for an interpretation or correction thereof.

The JOC 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 who shall distribute the addendum to the appropriate Subcontractor(s). The City will not be responsible for any other explanation or interpretations of the documents.

5.7.2. JOC's Representative. The JOC 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's foreman or agent on the Work shall be considered as having been given to the JOC.

5.7.3. 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.

5.7.4. Supervision by JOC. The JOC will supervise and direct the Work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the JOC as the JOC's representative at the Site. The supervisor shall have full authority to act on behalf of the JOC and all communications given to the supervisor shall be as binding as if given to the JOC. 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 and the City.

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

5.7.6. Survey Control Points. Existing survey monuments shall be protected by the JOC or removed and replaced under the direct supervision of the City surveyor or the City surveyor's authorized representatives.

Prior to construction, the JOC shall notify the City surveyor of any survey monuments which need to be referenced off of the monument. Any monuments lost that have not been referenced off due to the JOC's negligence and/or lack of notification to the City surveyor shall be replaced at the JOC'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.

5.7.7. 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, 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 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 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.

5.7.8. Shop Drawings, Schedules and Samples. In time for each to serve its proper purpose and function, the JOC 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 for which the submittal is made. The additional copies received will be returned to the JOC's representative at the job Site. The Engineer's notations of the action 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 job Site Contract, 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 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.

5.7.9. As-Built Plans. The JOC shall provide and maintain accurate field data on a redlined 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, and certified to be complete by the architect/engineer of record.

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

5.7.11. Inspection. The JOC 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 must call for final inspections from the Development Services and Public Works Departments of the City. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

5.7.12. Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to JOC 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.

5.7.13. 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 and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

5.7.14. Completion of the Work. Completion of the Work is full completion of all construction associated with the 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.

5.7.15. Final Acceptance and Guarantee. Final Acceptance shall mean a written Final Acceptance of the Work by the City. The City Engineer shall make the Final Acceptance promptly after the Work has been completed in accordance with the Contract and after inspection is made. The Work performed under this Contract shall be guaranteed by the JOC for a period of one (1) year from the date of Final Acceptance.

5.7.16. Substitution of Subcontractors. The JOC shall not substitute any Subcontractor in place of a Subcontractor listed in its Job Order Proposal except as specifically authorized by the City or pursuant to Arizona law.

5.8. Control of Materials.

5.8.1. Excess Materials. Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the JOC. The JOC 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.

5.8.2. 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 the Contract and it shall be the duty of the JOC 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 as though contained in the original Contract.

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 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 Final Acceptance of the material nor shall it preclude retesting or reinspection at the Site of the Work.

5.9. Legal Regulations and Responsibilities to Public.

5.9.1. Conflict of Interest. This Contract is subject to cancellation under the provisions of A.R.S. § 38-511.

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

5.9.3. Non-Discrimination. City is an equal opportunity, affirmative action employer. JOC hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. JOC covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. In addition, JOC agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act and the Fair and Legal Employment Act and all laws, rules and regulations attendant thereto. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

The JOC 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 this clause.

5.9.4. 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 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 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 haul permit before the hauling operation begins.

Prior to receiving a hauling permit, the JOC 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 Transportation Division. Prior to submittal, the JOC should contact Engineering Services for complete details for issuance of the City haul permit.

5.9.5. Environmental Requirements.

a. JOC covenants and agrees that it shall, at all times during the term of the Contract, and at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of or operations at the Project Site by JOC, its agents, assigns and/or employees. JOC agrees that should it or any of its agents, assigns or employees know of (a) any violation of environmental laws relating to the Project Site, or (b) the escape, release or threatened release of any hazardous materials in, on, under or about the Project Site, JOC shall promptly notify the City in writing of such, and that it will provide all warnings of exposure to hazardous materials in, on, under or about the Project Site in strict compliance with all applicable environmental laws. Further, JOC covenants and agrees that it shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on under or about the Project Site, any hazardous materials, or permit or allow any of its agents, assigns or employees to do so. Prior to use of the Project Site the JOC shall provide the City an inventory of all equipment and materials stored and/or to be stored at the Project Site.

b. For purposes of this Contract, hazardous materials shall include but is not limited to, any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any environmental laws, including without limitation, any (a) substance defined as a "hazardous substance", "extremely hazardous substance", "hazardous material", "hazardous chemical", "hazardous waste", "toxic substance" or "air pollutant" by federal laws, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., and all amendments thereto, or other similar governmental restrictions; and (b) any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance,

injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any hazardous materials laws; (iii) gives rise to any reporting, notice or publication requirements under any hazardous materials laws; or (iv) gives rise to any liability, responsibility or duty on the part of the City or JOC with respect to any third person under any hazardous materials laws.

In addition, JOC must comply with the following requirements:

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

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

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

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

e. 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.

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

g. City refuse roll-off containers shall be used on City projects. Please contact the City, acting sanitation supervisor, with any questions.

h. 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.

i. The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume at or around the identified area(s) until approved by the Engineer.

j. 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.

5.9.6. Safety Requirements. The JOC shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements including but not limited to, the Federal Occupational Safety and Health Act of 1970 (29 U.S. § 651 et seq.), and all rules, regulations, and orders adopted pursuant thereto. In addition, the following requirements are applicable for City construction projects.

5.9.7. Briefing. The JOC will be required to attend a City safety briefing. The safety briefing session shall address the following City safety rules and expectations:

a. Contractor Tailgates. JOC shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.

b. Accident/Injury/Illness Procedures. The City's Construction Manager and the Risk Management Division shall be contacted within twenty-four (24) hours, upon the occurrence of any accident, injury or illness on the Project.

c. Unsafe Acts. JOC employees shall take any and all reasonable acts to stop an unsafe act or condition at the Project Site.

d. Safety Audits. The City reserves the right to conduct safety audits at the job Site at any time. In addition, JOC shall immediately notify the City should an OSHA inspection occur at a Project Site.

e. Job and Site Specific Requirements. JOC shall comply with all site specific requirements such as lockout/tagout rules and evacuation plans, which shall be covered during safety briefing(s) by the City.

If applicable to the Project JOC shall:

a. 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 implementing a confined space program, JOC shall 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, JOC shall provide a trained attendant and all necessary equipment required for safe entry of the City employee.

Safety will be included in each agenda of 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 obtain copies of all agendas, minutes of the meetings, and documentation of any safety tailgate meetings held regarding the Project Site.

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

No additional payment by the City will be made to JOC or its subcontractor for temporary barricades.

5.9.9. Protection of Finished or Partially Finished Work. The JOC 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 completed Work shall not release the JOC from responsibility prior to City's acceptance, but JOC shall turn over the entire Work in full in accordance with the Specifications before final payment will be made.

5.9.10. Blue Stake. The JOC is required to notify Arizona Blue Stake, Inc. at (602) 263-1100 or otherwise first determine whether underground facilities will be encountered, and if so where they are located from each and every underground facilities operator and taking measures for control of the facilities in a careful and prudent manner, prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21, et seq. The JOC shall contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities prior to undertaking any Work.

5.9.11. Salt River Project Construction Clearance Agreement. Salt River Project requires JOC if working on its facilities, to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. JOC shall execute the Construction Clearance Agreement with Salt River Project, if required, and furnish a copy to the City prior to proceeding with any construction on Salt River Project facilities. 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 JOC 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.

5.9.12. Notification of Property Owners. JOC shall notify all property owners that may be affected by the proposed construction activities of the scope and duration of the construction activities prior to start of any Work or construction.

5.9.13. Access. JOC shall maintain public access to adjacent businesses of the Project Site 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, access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained by the JOC during all non-working hours.

5.9.14. Protection of Existing Facilities. The JOC shall protect all existing facilities during construction or Work. Utility poles that may be affected by construction activities shall be protected and/or braced by the JOC. The JOC shall notify the appropriate utility company or agency of any construction or Work that may affect its facilities and state the course of action which will be taken to protect same.

5.9.15. Storm Water Pollution Prevention Plan and AZPDES Permit. JOC shall secure a General Permit, if required, pursuant to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. JOC 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 and as set forth pursuant to 18 A.A.C. 9 Art 9. The AZPDES construction general permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from the City Engineering Division and at www.adeq.state.az.us/environ/water/permits/links.html.

The JOC shall complete and submit the following documents to the City for any Job Order that qualifies for this provision prior to undertaking any Work:

a. 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.

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

c. 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 shall submit completed and signed NOI forms prior to receipt of the 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 shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the JOC (or any of its 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 JOC will not be entitled to any claim for additional compensation or costs resulting from such a delay in the construction start date. The NOI shall be posted on the Project Site along with the SWPPP.

JOC shall perform inspections of all stormwater pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The JOC is responsible for maintaining those devices in proper working order, including cleaning and/or repair.

The JOC, as the permittee of construction activities with stormwater discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality. 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.

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

Upon total project completion, acceptance, and de-mobilization, JOC shall submit it's 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, including all 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 JOC is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include JOC's 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.

5.10. Commencement, Prosecution and Progress.

5.10.1. Time is of the Essence. All time limits specified in this Contract are of the essence to the Contract.

5.10.2. Start of Work. Work shall start as soon as practical, and in no case later than seven (7) calendar days after the issuance of the Notice to Proceed for each Job Order by the City, and shall be completed within the Contract Completion Date.

5.10.3. 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 take into account anticipated or actual 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.

5.10.4. JOC's Construction Schedule. Prior to the start of Work, JOC shall provide the City with a construction progress schedule for all Project(s) and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be produced by the JOC with the submission of each monthly pay request to the City.

5.10.5. Hindrances and Delays. Except as provided herein, no charge shall be made by the JOC for hindrances or delays from any cause during the progress of any portion of the Work set forth in this Contract; but such delays, if due to no fault or neglect of the JOC, may entitle the JOC to a time extension sufficient to compensate for the delays. The amount of the time extension, if any, shall be determined by the Engineer provided the JOC gives the Engineer immediate notice in writing of the cause of such delay.

The parties agree to negotiate in good faith for the recovery of damages related to expenses incurred by the JOC for a delay for which the City is solely responsible which is unreasonable under the circumstances; and which delay was not within the contemplation of the parties to the Contract at the time the Contract was entered into, and,

a. Unless specifically provided for herein, 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.

b. This section shall not be construed to void any provisions of this Contract, which require notice of delays, which provide for alternative

dispute resolution, other procedures for settlement, or which provide for liquidated damages.

However, if the parties can reach no agreement for the recovery of damages as set forth herein, the determination of the City shall be final.

5.10.6. 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.

5.10.7. 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.

5.10.8. 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 each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

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

5.10.10. 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.

5.10.11. 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.

5.10.12. 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.

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

5.10.14. 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. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the JOC and not for the benefit of any other party.

5.10.15. Cooperation and Further Documentation. The JOC 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.

5.10.16. 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.

5.10.17. Patented and Copyright Materials; Property Rights. JOC shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used or incorporated into the Project and agrees to hold harmless, defend and indemnify the City, its officers, employees, representatives and agents, from all suits, actions or claims for or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes. Nothing herein shall be construed as vesting in the JOC any property right, including but not limited to intellectual property rights, in the materials or equipment after completion of the Project. All such materials and equipment shall become the property of the City upon completion of the Project, and the JOC warrants and represents that all such property shall pass to the City free and clear of all liens, claims, security interests or encumbrances.

5.11. Measurements and Payments.

5.11.1. Contract Price Adjustments. Any 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:

a. Unit prices set forth in the Job Order or as subsequently approved by the City;

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

c. Costs, fees and any other markups, upon approval by the City.

Any increases on such changes shall not exceed those delineated in the approved Job Order.

If an increase or decrease cannot be agreed to by the City as set forth in items (a) through (c), 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 shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

If the City and the JOC disagree upon whether the JOC 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 shall resolve the disagreement pursuant to MAG Specification 110.

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

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

5.11.2. Record Keeping and Finance Controls. Records of the JOC's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and JOC shall be kept on a generally accepted accounting basis. City reserves the right to inspect any and all records relating to the Project.

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

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

The JOC shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract 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 records relating to the Project to verify the accuracy and appropriateness of pricing data.

5.11.3. Payments by City. Payments by the City pursuant to A.R.S. § 34-221 et seq., shall be in the form of monthly progress payments to JOC upon approval of duly certified and approved estimate(s) of the Work performed during the preceding calendar month under the Contract. Payment may include funds for material and equipment. Said payments shall be made on or before fourteen (14) days after the estimate of the Work by JOC is certified and approved by the City. Upon fifty percent (50%) completion of the Project Work, one-half (1/2) of the retained amount shall be paid to the JOC upon JOC's request, provided JOC is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained, as determined by the City. Notwithstanding the foregoing, City reserves the right to retain ten percent (10%) of the amount of each estimate until final completion and acceptance of all material, Work and equipment covered by the Contract. In addition, the City shall withhold an amount from any progress payment sufficient to pay expenses the City reasonably expects to incur in correcting any deficiencies in JOC's Work under the Contract. In any event, the City shall retain ten percent (10%) of all Work estimates as guarantee for complete performance of the Contract. Upon final completion and acceptance of the Work by the City, JOC shall be paid within sixty (60) days after JOC's filing of notice of completion.

5.11.4. Payments by Contractor. In accordance with A.R.S. § 34-221(G), JOC agrees to promptly pay all Subcontractors within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Subcontractor or subordinate Subcontractors, on account of the Work performed by each to the extent of each such Subcontractor's interest therein, except that no contract for construction may materially alter the rights of any Subcontractor or material supplier to receive prompt and timely payment.

5.11.5. 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 further agrees that the City 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 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 JOC from any of the obligations or liabilities hereunder, or entitle JOC to any damages or compensation except as may be provided for in this Contract.

6. SPECIAL PROVISIONS

6.1. Key Contacts.

City Engineering (Project Manager)	Tom Wilhite	(480) 350-2921
City Engineering		(480) 350-8200
Blue Stake		(602) 263-1100

6.2. 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, if necessary, will be paid for by the City.

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

The duration of 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.

6.4. Confidentiality of Plans and Specifications. Any Plans or Specifications the JOC receives regarding this project are for official use only. The JOC 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 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's Contract with the City of Tempe".

6.5. Irrigation and Landscape Repair. The JOC 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 JOC meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

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

6.7. Coordination with Other Contractors. Coordination between contractors may be required. Should the JOC 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's performance of the Work at the Site be made by any separate contractor against the JOC, Design Engineer, or Construction Manager or any other person, JOC shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

JOC shall, to the fullest extent permitted by laws and regulations, defend, indemnify and hold City, 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 City, its officers, officials, employees and volunteers to the extent based on a claim caused by, arising out of, or resulting from JOC's performance of the Work.

Should a separate contractor cause damage to the work or property of JOC or should the performance of work by any separate contractor at the Site give rise to any other claim, JOC shall not institute any action, legal or equitable against City, 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 City, 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 is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and City and JOC are unable to agree as to the extent of any adjustment in completion time attributed thereto, JOC may make a claim for an extension of time. An extension of the completion time shall be JOC's exclusive remedy with respect to City, 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.