Staff Summary Report

Tempe

Council Meeting Date: 06/11/2009 **Agenda Item Number:** _____

SUBJECT: Request award of job order construction contracts to USA Shade and Fabric Structures, Inc. and Shade-N-Net of Arizona, Inc., to perform on-call job order construction for shade structures.

DOCUMENT NAME: 20090611PWTG04 ENGINEERING ADMINISTRATION (0803-02)

COMMENTS: Job order construction contracts for an annual amount not to exceed $1,000,000 with USA Shade and Fabric Structures, Inc. and Shade-N-Net of Arizona, Inc.

PREPARED BY: Theresa Galindo, Acting Engineering Contracts Administrator (x8518)

REVIEWED BY: Bob Pohlit, Senior Recreation Coordinator (x5255)
Andy Goh, Deputy PW Manager/City Engineer (x8896)

LEGAL REVIEW BY: Judi Morgan, Assistant City Attorney (x8227)

DEPARTMENT REVIEW BY: Glenn Kephart, Public Works Manager (x8205)

FISCAL NOTE: Funding for these contracts will be provided from each C.I.P. or client department for which each job order is performed. Each job order will be priced by the City in accordance with the job order contract. Each negotiated job order scope and pricing exceeding $50,000 will be presented to City Council for consideration.

RECOMMENDATION: Award job order construction contracts.

ADDITIONAL INFO: The job order contracting method of construction uses an on-call contractor, who has been selected using a quality based selection method, who will perform multiple capital improvement projects. The maximum dollar amount for individual job orders shall be no more than $750,000 each.

These contracts will generally be utilized for shade structure installation incorporated into park renovations, but may also be utilized for other city facilities. These contracts are for a term of one year with an option to renew for up to two years in two twelve-month increments. During the contract term, construction work is performed as a series of individual job orders. A scope, schedule, and price will be established for each individual job order, which will then be recommended to Mayor and Council for award of the individual job order, if it exceeds $50,000. The option to extend the job order contract will be evaluated by staff for recommendation to Mayor and Council based on the job order contractor's successful performance of individual job orders and the needs of the City.

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

USA Shade and Fabric Structures, Inc. and Shade-N-Net of Arizona, Inc. were selected by a review committee for the short list of qualified firms for job order construction using a qualifications based process consistent with A.R.S. § 34-603.

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

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT

FOR

FABRIC TOP SHADE STRUCTURES

Shade-N-Net of Arizona, Inc.

CITY COUNCILMEMBERS

Mayor – Hugh Hallman

Mark Mitchell

Joel Navarro

Shana Ellis

P. Ben Arredondo

Onnie Shekerjian

Corey Woods

2009

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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 2009 Uniform Standard Details for Public Works Construction and 2009 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.

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.

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

Date 5/28/09

Rev. 5 28 09

CONTRACT

THIS CONTRACT is made and entered into this 11th day of June, 2009, by and between the City of Tempe, an Arizona municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona ("City"), and Shade-N-Net of Arizona, Inc., an Arizona corporation ("JOC").

RECITALS

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

II. JOC has represented to City its ability to provide or procure construction and design services. Based upon this representation, City engages 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 City 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 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 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 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 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 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 JOC's total administrative costs, including home office overhead if any, and profit, whether at 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 Construction Manager Professional's contract with City.

1.11. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by City and JOC covering the Job Order Construction Services. The Contract collectively represents the entire agreement between City and 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 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. 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 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 City.

1.17. **"Cost of the Work"** means the direct costs necessarily incurred by JOC in the proper performance of the Work. 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. Cost of the Work shall not include 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 JOC during the conceptual Design Phase and based on information from the Project Team and JOC's records of similar projects. The model will evolve as the design progresses, be maintained by JOC throughout the Design Phase and will include any assumptions and clarifications made by JOC. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. Cost Model is subject to approval by 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 JOC in performing the scope of Work described in the Contract. Some of the major deliverables to be prepared and provided by 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 Project Team.

1.21. **"Design Engineer"** means the person, firm or corporation having a contract with 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 Design Engineer to furnish services required of Design Engineer, as 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 City of the scope of work set forth herein, following completion of a Job Order by JOC as prescribed in each Job Order.

1.30. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of 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 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 City to provide or procure construction and design services as detailed in this Contract.

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

1.34. **"JOC's Representative"** means the person acting directly for 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 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 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 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 JOC(s); the construction price of Subcontractor(s), the price of Subconsultant(s), labor, overhead and profit, general conditions fee, taxes, bonds, insurances costs, and 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 City to 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, of this Contract, and/or any Work for 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 for this Contract.

1.41. **"MAG Specifications"** means Maricopa Association of Governments 2009 Uniform Standard Details for Public Works Construction and 2009 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 Contract and requirements of MAG Specifications, 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 City to JOC stating that upon compliance by JOC with the conditions precedent enumerated therein, within the time specified, City anticipates the execution of this Contract.

1.44. **"Notice to Proceed"** means written notification from City to JOC establishing the date on which performance of 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 JOC during the construction phase of the Project, and which have been prepared and approved by the Design Engineer for City. This definition includes Plans that have reached a sufficient stage of completion as determined by City, and that have been released by the Design Engineer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (*e.g.*, conceptual design Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but "NOT FOR CONSTRUCTION"). Shop drawings are specifically excluded from this definition.

1.46. **"Product Data"** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by 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 JOC pursuant to an express fixed-price Job Order.

1.48. **"Project Team"** means a construction services unit consisting of a Design Professional, JOC, 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 City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by City.

1.49. **"Record Documents"** means any and all data relating to this Project in any 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.

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 JOC and submitted by JOC to City to illustrate some portion of the Work. This definition replaces 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 JOC to undertake to perform a part or portion of the Design Phase services or construction phase Work at the Site for which JOC is responsible.

1.55. **"Substantial Completion"** means when the Work, or a significant portion of the Work as determined by City, is sufficiently completed, in City's sole discretion so that City 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 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. 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 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 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 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 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 Design Professional are subject to review and approval by City in its sole discretion. Review and/or approval by City does not

relieve Design Professional from any professional liability associated with the documents.

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

3. CONTRACT PRICE AND JOB ORDER PRICE

3.1. Contract Price. This Contract will have a maximum dollar amount of One Million Dollars ($1,000,000).

3.2. Job Order Price. Each Job Order under this Contract shall not exceed Seven Hundred Fifty Thousand Dollars ($750,000) in construction costs, in City's discretion. In no event will any Job Order exceed Seven Hundred Fifty Thousand Dollars ($750,000).

3.2.1. No changes, modifications or alterations to the Job Order shall be made without the prior written consent of 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 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. JOC will inform 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 City's Contingency are expended, 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:

List each of the shade structures using the price table(s) per price list page PL-1 to

Item No.	Item Name	Quantity	Unit	Unit Cost	Total Cost
_____	_____	_____	____	$_____	$_____

Combined Price of Shade Structure(s)	$_____
Price of Subconsultant(s) (If applicable)	$_____
Combined Total	**$** _____
Tax %	**$** _____

3.4. JOC Guarantee for Job Order Price. 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 JOC.

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

3.6. Submission of Proposal. 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 City for approval, based on the scope meeting and the provided documents. City will review any submitted proposal. Upon City's approval of said proposal, 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, 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

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 5.7.14 Completion of the Work, herein.

4.1. Contract Term. The effective date of this Contract shall be June 11, 2009. The Contract Term shall commence following issuance of a Notice to Proceed by 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 City pursuant to this Contract, which ever occurs first, with an option by 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 five (5) years from its effective date.

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

4.2. Job Order Time. Job Orders may be issued at any time during the duration of this Contract by 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 City's sole discretion, in accordance with this Contract.

4.3. Substantial Completion. Generally, City will not approve Substantial Completion of buildings and/or building improvements. If City determines that approval of Substantial Completion is necessary, said approval will be made in 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 City or representative thereof; (c) all materials and equipment installed; (d) all systems reviewed and accepted by 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 City, may also include: (a) elevator permits; (b) draft operation and maintenance manuals and record documents reviewed and accepted by City; (c) City operation and maintenance training completed; (d) landscaping and Site work; and/or (e) final cleaning and remediation.

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. 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, JOC must obtain a valid City Transaction Privilege License at its sole expense and shall provide the Permit Number of such for validation to 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 Subcontractor does not have the appropriate license, City reserves the right to reject any or all of the Job Order proposal.

5.1.2. Examination of Premises. 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 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, 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 City's representative prior to starting any Work or performing services

pursuant to the permitted activity. This provision does not constitute an assumption by City of an obligation of any kind for violation of said permit or notice requirements.

c. City agrees to be responsible for City's own review and permit(s) fees for building and demolition permits only. In addition, City shall bear its own review fees for grading and drainage, water, sewer, and landscaping. 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 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 City. This Contract, including exhibits, attachments and schedules attached hereto, signed by 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 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 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. § 34-608. 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, 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. § 34-608.

5.2.3. Insurance Requirements. 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 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, JOC shall furnish 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 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 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 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 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, 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 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. City shall be entitled to terminate this Contract at any time, in its discretion. 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 JOC. Termination shall be commenced by delivery of written notice to JOC by 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 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 JOC's name;

b. Job Order number and date;

c. Agreed Work and applicable technical specifications and drawings;

d. Agreed period of performance and, if required by City, a Work schedule;

e. Place of performance;

f. 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 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 Specifications; the City of Phoenix Barricade Manual, latest edition, with City revisions, available at 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, 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. City shall designate a representative who will oversee and monitor JOC's agent and enforce City's requirements as set forth herein. JOC covenants to give 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. JOC shall submit a traffic control plan to 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 City. The most restrictive provisions shall apply. Unless identified otherwise in the Technical Specifications, 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. All costs or expenses related to traffic control shall be considered incidental to other pay items and borne solely by JOC. Any and all revisions relating to traffic and/or traffic control shall be submitted to City for review and approval in 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 City. Any and all repairs and/or replacement costs expended by City in this regard shall be reimbursed by JOC at twice City's actual cost.

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. 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 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 City; and, remove all equipment, materials, tools and JOC's personal property prior to submission of final invoice to City.

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

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

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

5.7.3. Relocation of Utilities. All utilities in conflict with the new Work will be relocated by City except as otherwise provided in the Plans and Specifications.

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

5.7.5. Construction Staking. Construction staking will be provided by 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 JOC's expense.

5.7.6. Survey Control Points. Existing survey monuments shall be protected by JOC or removed and replaced under the direct supervision of City surveyor or City surveyor's authorized representatives.
Prior to construction, JOC shall notify 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 JOC's negligence and/or lack of notification to City surveyor shall be replaced at 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. 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 City, public safety, and quality and acceptability of materials and work performed. Construction Manager Professional or Construction Manager Professional's assigned inspector shall interpret the intent of the Contract in an unbiased manner.

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. Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract so as to minimize delays in construction. 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, JOC shall submit to 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 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 JOC's representative at the job Site. 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.

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

5.7.9. As-Built Plans. 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 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 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. 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, JOC must call for final inspections from the Development Services and Public Works Departments of City. The final inspection must be completed prior to final acceptance and payment by City Engineer.

5.7.12. 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 City will prepare a written contract with JOC and accomplish a partial acceptance inspection.

5.7.13. 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.

5.7.14. Final Acceptance and Guarantee. Final Acceptance shall mean a written Final Acceptance of the Work by City. 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 JOC for a period of one (1) year from the date of Final Acceptance.

5.7.15. Substitution of Subcontractors. JOC shall not substitute any Subcontractor in place of a Subcontractor listed in its Job Order Proposal except as specifically authorized by 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 JOC. 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 JOC to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the Work.

Engineer may, through appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon 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. 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. Specially Designated Nationals and Blocked Persons List. JOC represents and warrants to City that neither JOC nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is

engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendre*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, JOC certifies that it does not have a scrutinized business operation in either Iran or Sudan.

5.9.4. Employment Laws. 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 and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, and all amendments thereto, along with all attendant laws, rules and regulations. JOC acknowledges that a breach of this warranty is a material breach of this Contract and JOC is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all Contractors, Subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of JOC. 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.

5.9.5. Equal Opportunity. 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. JOC agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this clause.

JOC further agrees to include the provisions of Sections 5.9.3 – 5.9.5 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

5.9.6. 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, 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 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, 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, JOC should contact Engineering Services for complete details for issuance of City haul permit.

5.9.7. 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 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 JOC shall provide 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 applicable 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 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.

5.9.8. Safety Requirements. 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.

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

a. City safety rules and expectations.

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

c. Accident/Injury/Illness Procedures. 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.

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

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

f. 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 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 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 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. 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.

5.9.10. 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 City will be made to JOC or its Subcontractor for temporary barricades.

5.9.11. Protection of Finished or Partially Finished Work. 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 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.

5.9.12. Blue Stake. In addition to Section 6.8.4 herein, 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. §§ 40-360.22 - 24. JOC shall contact City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities prior to undertaking any Work.

5.9.13. 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 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 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.

5.9.14. 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.

5.9.15. 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 JOC during all non-working hours.

5.9.16. Protection of Existing Facilities. 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 JOC. 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.

5.9.17. 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, as amended from time to time. 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.

JOC shall complete and submit the following documents to 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.

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 City's construction project manager or Engineer at the time of the preconstruction meeting. JOC shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval. Failure by 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 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. 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). JOC is responsible for maintaining those devices in proper working order, including cleaning and/or repair.

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 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 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 City.

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 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 JOC with the submission of each monthly pay request to City.

5.10.5. Hindrances and Delays. Except as provided herein, no charge shall be made by 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 JOC, may entitle 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 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 JOC for a delay for which 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 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 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 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 City and JOC. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and JOC and not for the benefit of any other party.

5.10.15. Cooperation and Further Documentation. JOC agrees to provide City such other duly executed documents as may be reasonably requested by 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 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 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 JOC any interest in or 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 sole property of City upon completion of the Project, and JOC warrants and represents that all such property shall pass to 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 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 City;

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

c. Costs, fees and any other markups, upon approval by 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 City as set forth in items (a) through (c), above, and 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 City or 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 City in its sole discretion.

If City and JOC disagree upon whether JOC is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and 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 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. Recordkeeping and Finance Controls. Records of JOC's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between 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.

City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit 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.

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

JOC shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract to ensure 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.

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 City to audit records relating to the Project to verify the accuracy and appropriateness of pricing data.

Record Documents shall be kept by JOC for a period of five (5) years following the close of each calendar year of the Contract Term and all 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.

5.11.3. Payments by City. Payments by City pursuant to A.R.S. § 34-607 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 City. Upon fifty percent (50%) completion of the Project Work, one-half (1/2) of the retained amount shall be paid to 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 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, City shall withhold an amount from any progress payment sufficient to pay expenses City reasonably expects to incur in correcting any deficiencies in JOC's Work under the Contract. In any event, 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 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. JOC further agrees that 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 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 Construction Manager	Larry Fosholt	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 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 JOC receives regarding this project are for official use only. JOC may not share them with others except as required to fulfill the obligations of its Contract with City.

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by 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 JOC's Contract with City of Tempe".

6.5. Irrigation and Landscape Repair. 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 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. JOC shall submit a project sequencing schedule to City Engineer for review at the pre-construction conference. JOC is on notice that City will review the proposed schedule to insure limited community impact.

6.7. Coordination with Other Contractors. Coordination between Contractors may be required. Should 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 JOC's performance of the Work at the Site be made by any separate Contractor against 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.

6.8. Shade Structures. Fabric shade structures will be ordered on an "as needed" basis. JOC shall be responsible for visiting the Site, and accurately measuring the Site for the structure installation. Job Order Price shall be based on the prices of shade structure components as listed herein.

6.8.1. Submittals. Job Orders shall include **specification sheets** for the steel structures, fabric and footers with the Job Order Price. Catalog pages ***only*** will not be considered as a full submittal. Job Order will include all items requested under "Quality Assurance" with their Job Order Price.

6.8.2. Projects. The City of Tempe, Parks and Recreation Department anticipates that it will be constructing and/or renovating two (2) to four (4) park playgrounds each year. It is anticipated that each will require one (1) or more fabric shade structures. There may also be other City of Tempe Departments requiring the installation of shade structures.

The following City projects requiring fabric shade structures are anticipated to occur during the next twelve (12) months:

Project	**Approx. Size**	**Type**
Tempe Sports Complex	25' x 25'	Hip
Tempe Skate Park	20' x 20'	Cantilever
Optimist Park	40' x 40'	Hip
Stroud Park	30' x 40'	Hip

City also anticipates that it may require construction of fabric shade structures for Tempe Beach Park's Splash Playground and Tempe Town Lake. The size and type of these structures is yet to be determined.

6.8.3. Vehicle Permits for Park Projects. JOC must obtain a vehicle permit from the City Parks Department prior to bringing any vehicle on City Park property. This shall include construction and personal vehicles. Permits are to be obtained from the Parks and Recreation Department. Contact Construction Manager at 480-350-2922.

6.8.4. Parks Blue Stake. In addition to Blue Stake requirements set forth in Section 5.9.12.,; JOC shall contact Dick Mickle at 480-250-5146 and Facility Services at 480-350-8265 for location of underground irrigation and electrical utilities in Parks and Recreation facilities, a minimum of two (2) working days prior to any excavation.

6.8.5. Fencing.

a. JOC shall be solely responsible for securely placing construction fencing around the perimeter of the installation Site prior to the start of any work, and maintaining security for the Site for the duration of the Project. Fencing shall remain in place until final approval by City.

b. No construction fencing panels with barbed wire shall be used by the JOC.

c. Construction fencing shall be removed immediately after Project completion, Site clean up and final inspection approval.

6.8.6. Park restrooms.

a. JOC and employees there of, may use City park restrooms if available. Most City parks do NOT have restroom facilities.

b. JOC shall otherwise be responsible for supplying all restroom facilities for their employees and Subcontractors.

6.8.7. Communication

a. JOC shall have a supervisor/foreman on Site at all times, who exhibits proper communication skills and the ability to interact with City representative at all times during working hours.

b. The use of abusive, offensive sexually oriented or vulgar language is prohibited.

6.8.8. References.

a. All shade structures must comply with the latest revision of all applicable City of Tempe codes and regulations including:

1. International Building Code (IBC);

2. American Society for Testing Materials (ASTM);

3. American Welding Society;

4. Structural Welding CODE AWS D1.1;

5. Symbols for Welding and Nondestructive Testing AWS 2.4; and

6. American Institute of Steel Construction, "Specifications for the Design, Fabrication, and Erection of Structural Steel".

6.8.9. Design Criteria.

Shade structures shall be designed to comply with the latest revision of all applicable City of Tempe codes and regulations including the International Building Code (IBC).

6.8.10. Lighting.

a. All shade structures must comply with the latest revision of all applicable City of Tempe codes and regulations including the IBC.

b. City shall provide the required electrical/lighting designs, plans and submittals. City and its electrical Contractor shall be responsible for providing all materials and installation of all electrical and lighting elements required by the permitted electrical/lighting plans.

c. JOC shall provide all structural preparation as required by City electrical/lighting plans. This shall include hand holes, hand hole covers, light fixture mounting plates, pull tape inside structural posts and tubing.

6.8.11. Permits and Inspections.

a. Permits are required for all fabric shade structures. JOC shall be responsible for obtaining all permits including the electrical/lighting permit as referenced in Section 5.1.3.

1. City shall provide the required electrical/lighting plans and submittals to the JOC for its permitting application.

2. City shall be responsible for having any electrical/lighting redlines addressed prior to re-submittal by the JOC.

b. It is the intent of the City to keep all required engineered drawings and calculations on file for a period of three (3) years for use in the permitting process for future shade structures of the same size during that time period. The permitting submittal shall include a letter from the sealing Engineer that the reuse of the drawings and calculations is acceptable during that three (3) year time period.

c. JOC shall request and schedule all inspections as required by the permits, including all electrical inspections.

d. JOC shall be responsible for coordinating all required Work with the City's electrical Contractor prior to calling for inspection. Both the required structural and electrical inspections MUST be approved by City prior to proceeding with the next Work phase.

6.8.12. Quality Assurance.

a. Companies/Contractors, Subcontractors and/or manufacturers shall be currently licensed for any and all products or services they are providing.

b. All structures shall require engineered drawings by an Arizona Registered structural engineer, as approved by City.

7. TECHNICAL PROVISIONS

7.1. Fabric Top Shade Structures.

7.1.1. Structure Standards.

a. JOC shall be responsible for the engineering, fabrication and installation of structure as detailed in the sealed engineering drawings, including:

1. Structural Steel.
2. Footings.
3. Fabricated Shade Panels.
4. Clamping.
5. Fasteners.

b. Life Safety: All fabric shade structures shall be designed so no life safety issue is created in the event of a loss of a part of the fabric. The fabric structure shall not rely on the fabric for structural stability.

7.1.2. Structure Specifications.

a. Specifications for structures of the same height, size and type may be used for different Sites with the Engineer's and/or City's approval.

b. Structures designed and engineered "in tandem" shall be acceptable in lieu of "extreme spans".

7.1.3. Structure Load and Wind Sheer.

a. The structure live load, dead load, uplift and wind design speed shall meet the requirements of the current version of the IBC and Tempe supplements thereof.

7.1.4. Foundations.

Foundations shall be designed using allowable soil bearing value of 1,500 per square foot for spread footing.

7.1.5. Concrete

a. Concrete work shall be executed in strict accordance with the latest American Concrete Institute Building Code (ACI 318-89).

b. Concrete specifications for footings, piers and slabs shall meet a minimum 3,000 psi at 28-day strength.

c. Slump = 6" maximum.

d. Whenever daily ambient temperatures are below eighty degrees Fahrenheit (80°),, JOC may have mix accelerators and hot water added at the batch plant (See Table I).

e. JOC shall not pour any concrete when daily ambient temperatures are below fifty-five degrees Fahrenheit (55°).

Table I

Temperature Range	% Accelerator	Type Accelerator
75-80 degrees	1%	High Early (non calcium)
70-75 degrees	2%	High Early (non calcium)
Below 70 degrees	3%	High Early (non calcium)

7.1.6. Concrete Anchors.

Embedment Anchors

- Stainless Steel/SS ½" x 6 ½" with a minimum 4 ½" embedment. HY 150 epoxy anchor system used in accordance with ICBO #5193.

Cast in-place Anchors

- Cast in-place anchors shall be A-36 steel, 9/16" x 18" with a minimum embedment of 12".

7.1.7. Reinforcement Steel

a. All reinforcement steel shall conform to 40,000 psi ASTM A-36 Grade 60.

b. Reinforced steel shall be designed, detailed, fabricated and placed in accordance with the latest ACI Detailing Manual (SP-66) and CRSI Manual of Standard Practice.

c. Internal sleeves shall be allowed where structures or parts are joined. An internal sleeve tolerance of 0.0625 inches using tensile strength steel sections with a minimum sleeve length of six (6) inches shall be adhered to in order to provide added stability to the structure.

7.1.8. Structural Steel.

a. Steel posts requirements.

1. All cable tension and extreme span structures shall be supported by steel posts as designed by structural Engineer.

2. Size, gauge of steel and number of posts shall be selected based on the Engineer's design and according to the structure's load and span requirements.

3. All structures shall be constructed per the Engineer's and AISC specifications.

b. Acceptable steel for large structures.

1. A-36 black carbon steel

c. Acceptable steel for standard and modular structures.

1. Allied Tube and Conduit.
2. Meets ASTM A500 cold-formed steel, 7 GA to 15 GA.

d. Coatings. Powder-Coating: Allied "Flo-Coat" pre-galvanized steel shall be used when power-coating.

e. Characteristics:
i. Specific gravity: 1.68 +/- 0.05.
ii. Theoretical coverage: 114 +/- 4ft2/lb/mil.
iii. Mass loss during cure: <1%.
iv. Maximum storage temperature: 75° F.

f. Powder-coating shall meet the following tests:

ASTM D523-89	(Gloss at 60 0)	85-95
HOITM 10.219	PCI Powder smoothness	7
ASTM D2454-91	Over-bake resistance time	200%
ASTM D3363-92a	Pencil hardness	H-2H
ASTM D2794-93	Dir/ Rev Impact, Gardner	140/140 in/lbs
ASTM D3359-95.B	Adhesion, cross hatch	5B Pass
ASTM D522-93a	Flexibility Mandrel	1/4 in. dia., no fracture
ASTM B117-95	Salt Spray	1,000 hours
UL DtOV2	Organic coating steel enclosures, elect eq recognized	

g. Application Criteria.

1. Electrostatic spray, cold
   (Substrate: 0.032 in. CRS)
   Cure schedule: 10 minutes at 400 OF
   Pre-treatment: Bonderite 1000
   Film thickness: 2.0 - 3.0 Mils

2. All steel tubing shall be triple coated for rust using the in-line zinc electroplating, Allied Flo-Coat Process.

3. Tubing shall be internally coated with zinc and organic coatings to prevent corrosion.

h. Plates.

1. All steel shall be finished with a minimum of 2.5 to 3.5 MIL thick UV-inhibited weather resistant powder coat.

i. Carbon Steel Substitute.

1. Where structural steel or determined loads require larger structural steel members or steel greater than 7-gauge thickness, carbon steel may be substituted.

2. Cleaning and coating of carbon steel shall conform to the following:

   i. A de-greasing agent shall be applied to remove surface oil and grease.
   ii. An acid-phosphate wash shall be applied to etch and prepare the surface for powder coating, where wall thickness requires pre-heating.
   iii. Steel members shall be pre-heated prior to powder coat application to assure adhesion.

j. ASTM Standards.

1. All carbon Structural Steel shall be ASTM A-36, except steel pipe columns, which shall be ASTM A-53, grade B, unless otherwise noted.

2. Slip fittings shall be manufactured using drawn-over-mandrel steel with minimum yield strength of 70 ksi and a minimum tensile strength of 80 ksi.

k. Welding.

1. Welders shall be certified in accordance with the latest edition of the American Welding Society specifications.

2. Shop connections are welded unless otherwise noted.

3. Field connections shall be indicated separately on drawings.

4. Alt welds shall be performed using E70 electrodes or gas-metal arc welding using ER 7053 wire.

5. All metal welds shall be a minimum 3/16" unless otherwise noted.

6. All steel shall be welded shut at terminations to prevent internal leakage.

7.1.9. Hardware.

a. Bolt and fastening hardware shall be determined based on calculated engineering loads.

b. All hardware shall be first grade stainless steel.

c. All bolt fittings shall include nylon washers for watertight seals at all joints.

d. Erection bolts shall be stainless steel or zinc plated to retard corrosion, according to the following load requirements:

1. Low Strength: ASTM F595 stainless steel bolts, nuts, and washers.
2. Medium Strength: ASTM A307 zinc-plated steel bolts, nuts and washers
3. High Strength: ASTM A325 zinc-plated steel bolts, nuts and washers.

7.1.10. Tensioning cable.

a. Galvanized Aircraft Cable shall be used for all cable tension structures. Steel cable size is a based on calculated engineering load.

4. Cable shall be minimum nominal tensile strength of 9,000 pounds.

5. Cable shall be secured with approved fittings and cable hardware, as per manufacturers' specifications.

7.1.11. Aircraft Cable.

CABLE	LOAD	DIAMETER	STRAND
Galvanized	Light to Medium	1/4"	7/19
Galvanized	Light to Medium	5/16"	7/19
Galvanized	Heavy	3/8"	7/19
Galvanized	Heavy	1/2"	7/19

7.1.12. Thread Standards.

a. The sewing thread shall carry an eight (8) year warranty against shrinkage and deterioration from exposure to the elements, in addition to MAG Specification 108.8. and Section 8 of this Contract.

b. Thread shall be unaffected by cleaning agents, acid rain, mildew, rot, chlorine, saltwater, and industrial pollutants.

c. Sewing thread shall be made of one hundred percent (100%) expanded PTFE (polytetrafluorethylene).

1. Weave Style:	(ASTM D1777)	Twill330 g/m2 (9 75 oz/yd2)
2. Thickness:	(ASTMD4851)	036mm (0.14 in)
3. Strip Tensile:	(ASTMD4851)	Warp: 2250 N/5 cm (260 lb/in) Fill: 2150 N/5 cm (345 lb/in)
4. Trapezoidal Tear:	(ASTM D5587)	Warp: 347 N (78 lbs) Fill: 347 N (79 lbs)
5. Light Values:	(ASTM 903)	Transmission: 32% Avg: 450-650mm Reflection: 67% Absorption: 0-1%
6. Flame Propagation:		Pass NFPA 701 small scale
7. Burning Characteristics: ASTM E84		Flame Spread: 0 Smoke Index: 0
8. Ignitability:		Pass BS 7837-96 BS 5438.2B
9. Vertical Flaming		V-0 UL94V
10. Limiting Oxygen Index:		(LOI) > 95%
11. Flex Resistance:		Unlimited
12. UV Resistance:		Unaffected by UV Light
13. Temperature Range: 500°)		-212°C to 260°C (-350°F to

14. Chemical Resistance: Resistant to all acids and alkaline solutions from 0-14 pH and all organic solvents over the temperature range.

d. Acceptable Stitch Pattern.

1. Lockstitch - 1200 Denier
2. Chain stitch - 2400 Denier

7.1.13. Sewing Specifications.

a. All corners shall be strengthened with 16oz. Non-Tear cloth and strap to distribute load.

b. Protective webbing shall be double stitched into all areas where steel cable enters/exits the cloth pockets.

7.1.14. Fabric Specifications.

a. Raw Material.
   1. High Density Polyethylene with Ultra Violet additives
   2. Special chemicals for UV stability

b. Construction.
   1. Monofilament tape construction

c. Fabric Panel Material.

   1. Fabric material shall cover all exposed cable and connectors at terminal locations.
   2. Cloth shall be made of High-Density Polyethylene cloth with UV stabilizer treatment.
   3. The material shall be manufactured with cable tensioned fabric structures in mind.
   4. The fabric knit shall be made using monofilament and tape filler which has weight of 195g per square meter. Material shall be Rachel knitted to insure material will not unravel if cut.
   5. Burst Strength of 260 kpa

CATEGORIES	SOLID COLORS	STRIPE COLORS
Stretch	Fabric is stentored	Fabric is unstentored
Tear Strength (PSIA)	Warp 220.4622 lb. Weft 462.9707 Ib.	Warp 1 82.9836 Ib. Weft 401 .241 3 lb.
Burst Strength	37.7098 PSIA	33.0686 PSIA
Fabric Weight (oz/m2)	6.8784 ozm	7.0547 ozm
Fabric Width	9.8425 ft.	9.8425 ft.
Roll Length	164.04ft.	164.04ft.
Roll Dimensions	62.99" x 16.5354"	62.99" x 16.5354"
Roll Weight	+/- 66 lb.	+/- 68.34 lb.
Life Expectancy	A minimum of 10 years continuous exposure to the sun	A minimum of 10 years continuous exposure to the sun
Fading	Minimum fading after 6 years (3 years for red)	Minimum fading after 6 years (3 years for red)
Minimum Temperature	-22 degrees F.	-22 degrees F.
Maximum Temperature	+ 176 degrees F.	+ 176 degrees F.

8. WARRANTY

Upon completion of construction, inspection and acceptance by City, JOC shall furnish the owner with a written warranty. Warranty shall be dated based on the date of the final inspection and acceptance by City.

8.1. Such written warranty is subject to City's review and approval, and shall include the following: JOC warrants to City that the Work, including all materials and equipment furnished, shall be new unless otherwise stated in the Specifications, of good quality, in conformance with the Specifications herein, and free of defects in materials and workmanship. JOC's warranty obligation excludes defects caused by abuse, alterations or unreasonable failure to maintain the workmanship by persons other than JOC, Subcontractors or others under JOC's control. Nothing in this warranty shall limit any manufacturer's warranty which provides City with greater warranty rights than set forth in herein or otherwise in the Contract. JOC will provide City with all manufacturers' warranties and operation and maintenance manuals upon substantial completion of the Work. JOC's warranty

will commence for all portions of the Work upon Final Acceptance of the entire Work as determined by City under the Contract. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

8.2. Warranty shall also include fabric panels (cloth, stitching and fading), its perimeter attachment system and the structural support systems supplied and installed by the JOC has been installed in accordance with the project and manufacturer's specifications. All materials and workmanship, which will impair its normal use or service, shall be free from defects. Warranty shall state:

8.2.1. A minimum eight-(8) year shade cloth/fabric warranty;
8.2.2. A minimum 20-year structural warranty; and
8.2.3. A minimum 20-year structural corrosion warranty.

9. FORMS APPENDIX

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

LIST OF SUBCONTRACTORS SB-1

STATUTORY PERFORMANCE BOND PB-1

STATUTORY PAYMENT BOND PB-3

CERTIFICATION BY THE CONTRACTOR AUTHORIZING EMPLOYEES TO SIGN BINDING AGREEMENTS BA-1

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS AFF-1

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

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

[SIGNATURE PAGE TO FOLLOW]

SIGNATURE PAGE

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

CITY OF TEMPE, ARIZONA

By:_____
Mayor

By:_____
Public Works Manager

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

_____
City Attorney

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

Shade-N-Net of Arizona, Inc.

_____
Name

_____
Title

City Transaction Privilege
License (Sales Tax) Permit No.

_____

(Corporate Seal)

Certified to be a true and exact copy

_____
Karen M. Fillmore, Records Specialist

_____
Witness [IF CONTRACTOR IS INDIVIDUAL]

Rev. 5 28 09

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, JOC shall provide the information listed below regarding proposed Subcontractors which are subject to approval by the City.

Subcontractor Name	Address	Type of Work	% of Total Contract

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

KNOW ALL MEN BY THESE PRESENTS:

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

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 11th day of June, 2009, to complete Fabric Top Shade Structures, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

DATED this _____ day of _____, 2009.

_____
PRINCIPAL SEAL

BY:_____

**
_____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

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

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

KNOW ALL MEN BY THESE PRESENTS:

That _____ ("Principal") and _____,

a corporation organized and existing under the laws of the State of _____,

with its principal office in the City of _____ ("Surety"), as held and firmly

bound unto _____ ("Obligee") in the amount of _____

Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 11th day of June, 2009, to complete Fabric Top Shade Structures, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the construction provided for the Contract, then this obligation shall be void, otherwise to remain in full force and effect;

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

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

DATED this _____ day of _____, 2009.

_____
PRINCIPAL SEAL

BY:_____

** _____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

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

CERTIFICATION BY THE CONTRACTOR AUTHORIZING EMPLOYEES TO SIGN BINDING AGREEMENTS

Fabric Top Shade Structures

The following employees in our organization are duly authorized to sign binding agreements for and on behalf of the owner, partner, or principal of the corporation, or the manager or member of the limited liability company including, but not limited to, pay requests, change orders, required certifications, etc.:

Type or Print Name	Signature
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Contractor Name: _____

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

JOC'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS

_____, Arizona

Date_____

FABRIC TOP SHADE STRUCTURES

To the City of Tempe, Arizona

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

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

Signed and dated at _____ this _____day of _____, 2009.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2009.

_____
Notary Public

[Notary Seal]

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF JOC
REGARDING
HEALTH INSURANCE

_____, Arizona

Date_____

FABRIC TOP SHADE STRUCTURES

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

Name of Insurance Company:_____

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

Policy No.: _____

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

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

Signed and dated at _____, this _____ day of _____, 2009.

_____
Job Order Contractor

By:_____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBCRIBED AND SWORN to before me this _____ day of _____, 2009.

_____
Notary Public

[Notary Seal]

CITY OF TEMPE
GUIDELINES FOR IMPLEMENTATION OF HEALTH INSURANCE

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

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

Health insurance is required for permanent employees who work for the consultant/JOC 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 the number of hours, the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City covers temporary employees as determined at the start of each project.

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

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

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

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

will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

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

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

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

Glenn Kephart, P.E.
Public Works Manager

Fabric Top Shade Structure
Price List

THIS PRICING TABLE INCLUDES; All REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL for a standard 4 post structure DO NOT INCLUDE TAX.

1. All Surface Mount installations shall require new footings.
2. Dome, Hip and Pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
3. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable.

TABLE 1

Attach sketch of typical frame

Pricing Tables for Fabric Top Shade Structures

Standard Cable Tension Fabric Top Shade Structures - Price per Square Foot and Height

Square Feet	8 ft High	10ft. High	12ft. High	14ft. High	16ft. High
0-99	70.64	71.48	72.05	118.25	118.25
100-199	32.96	34.66	35.23	51.78	51.78
200-299	22.60	23.84	24.33	34.45	34.45
300-399	16.20	17.10	17.45	24.68	24.68
400-499	13.02	13.67	13.89	19.88	19.88
500-599	13.71	13.96	14.67	19.92	20.00
600-699	13.07	13.32	13.98	18.56	18.64
700-799	13.67	13.93	14.54	17.34	17.41
800-899	12.75	13.01	13.72	16.28	16.36
900-999	13.51	14.00	14.91	16.53	16.72
1000-1099	13.15	13.35	14.83	15.79	15.97
1100-1199	12.63	12.82	14.26	15.14	15.31
1200-1299	12.20	12.37	14.13	14.91	15.24
1300-1399	12.07	12.23	14.04	14.75	15.07
1400-1499	12.01	12.15	13.74	14.48	14.63
1500-1599	11.71	11.85	13.15	13.84	13.98

TABLE 2

THIS PRICING TABLE INCLUDES; ALL REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL. DO NOT INCLUDE TAX.

1. All surface mount installations shall require new footings.
2. Dome, hip and pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
3. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable

Add sketch of typical frame

Custom Extreme Span Fabric Top Shade Structures - Price per Square Foot and Height

Square Feet	10 ft. High	12 ft. High	14 ft. High	16 ft. high
1600-2499	13.07	14.74	15.19	15.27
2500-3500	12.45	13.85	14.19	14.27
3501-4000	11.77	13.22	13.44	13.76
4001-4500	13.15	14.69	15.03	15.34
4501-5000	13.19	14.86	15.17	15.45

TABLE 3

THIS PRICING TABLE INCLUDES; ALL REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL. DO NOT INCLUDE TAX.

4. All surface mount installations shall require new footings.
5. Dome, hip and pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
6. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable

In-Tandem Cable Tension Fabric Top Shade Structures – This table reflects the dollar credit for shared posts. This credit is being applied to the pricing for tables 1&2.

Square Feet	8 ft High	10ft. High	12ft. High	14ft. High	16ft. High
200-299	$395	$455	$483	$547	$577
300-399	$395	$455	$483	$505	$577
400-499	$395	$455	$483	$505	$577
500-599	$548	$576	$658	$685	$757
600-699	$548	$576	$658	$839	$885
700-799	$548	$576	$658	$839	$885
800-899	$548	$576	$658	$839	$885
900-999	$602	$683	$818	$972	$1,045
1000-1099	$610	$693	$830	$1,098	$1,189
1100-1199	$610	$693	$830	$1,098	$1,189
1200-1299	$610	$693	$830	$1,098	$1,189
1300-1399	$610	$693	$830	$1,098	$1,189
1400-1499	$610	$693	$830	$1,098	$1,189
1500-1599	$610	$693	$830	$1,098	$1,189

TABLE 4

THIS PRICING TABLE INCLUDES; ALL REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL. DO NOT INCLUDE TAX.

7. All surface mount installations shall require new footings.
8. Dome, hip and pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
9. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable

Full Cantilever Fabric Top Shade Units - Price per Square Foot and Height

Square Feet	10ft. High	12ft. High	14ft. High	16ft. High
200-299	39.13	44.47	49.63	49.63
300-399	28.03	31.87	35.54	35.54
400-499	24.43	26.86	30.30	30.30
500-599	22.99	26.08	27.87	28.74
600-699	20.85	23.83	26.03	26.78
700-800	20.12	23.07	25.13	25.80

TABLE 5

THIS PRICING TABLE INCLUDES; ALL REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL. DO NOT INCLUDE TAX.

10. All surface mount installations shall require new footings.
11. Dome, hip and pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
12. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable

Semi-Cantilever Fabric Top Shade Units - Price per Square Foot Height

Square Feet	10 ft. High	12ft. High	14ft. High	16ft. High
200-299	32.83	36.44	41.36	41.36
300-399	26.58	30.19	33.98	33.98
400-499	21.45	24.53	27.53	29.13
500-599	18.57	21.14	22.46	22.46
600-699	15.33	17.32	18.76	18.76
700-800	15.51	17.84	19.27	19.35

TABLE 6

THIS PRICING TABLE INCLUDES; ALL REQUIRED DESIGN, MATERIAL, EQUIPMENT, POWDER COATING, DELIVERY TO SITE AND LABOR TO INSTALL. DO NOT INCLUDE TAX.

13. All surface mount installations shall require new footings.
14. Dome, hip and pyramid shall be acceptable roof styles for standard cable tension and extreme span structures.
15. In-Tandem structures shall be acceptable in lieu of extreme spans when applicable

Custom Sail Fabric Top Shade Structures – Price per Post

Square Feet	Fabric- Price Per Square Foot	8	10	12	14	16	18	20
100-199	9.06	$3,682	$3,682	$3,719	$3,719	$3,719	$4,282	$4,282
200-299	9.06	$3,682	$3,682	$3,719	$3,719	$3,719	$4,282	$4,282
300-399	9.06	$3,682	$3,682	$3,719	$3,719	$3,719	$4,282	$4,282
400-499	10.73	$3,907	$3,907	$3,946	$3,946	$3,946	$4,507	$4,507
500-599	10.73	$3,907	$3,907	$3,946	$3,946	$3,946	$4,507	$4,507
600-699	10.73	$3,907	$3,907	$3,946	$3,946	$3,946	$4,507	$4,507
700-799	10.73	$3,994	$3,994	$4,033	$4,033	$4,033	$4,594	$4,594
800-899	11.87	$4,331	$4,331	$4,374	$4,374	$4,374	$4,931	$4,931
900-999	11.87	$4,801	$4,801	$4,849	$4,849	$4,849	$5,401	$5,401
1000-1099	11.87	$4,951	$4,951	$5,000	$5,000	$5,000	$5,551	$5,551
1100-1199	11.87	$5,101	$5,101	$5,152	$5,152	$5,152	$5,701	$5,701
1200-1299	13.54	$5,834	$5,834	$5,892	$5,892	$5,892	$6,434	$6,434
1300-1399	13.54	$5,834	$5,834	$5,892	$5,892	$5,892	$6,434	$6,434
1400-1499	13.54	$6,331	$6,331	$6,394	$6,394	$6,394	$6,931	$6,931
1500-1600	13.54	$6,481	$6,481	$6,545	$6,545	$6,545	$7,081	$7,081

Concrete Saw Cutting and removal for Foundations, per Lineal Foot

4" Thick $ 2.15

6" Thick $ 3.50

8" Thick $ 4.05

Hourly Rate, per Man Hour for Repair or Replacement of Pre- Existing Shade Fabric Material	$ 80.00
Cost per unit for Vinyl Safety Column Pads, per Post.	$ 115.00