

JOB ORDER CONTRACTING AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Job Order Contract Agreement (hereafter referred to as “the Agreement”, “the Contract”, “this Agreement” and/or “this Contract”) is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as “City”) and

**ALPHA BUILDING CORPORATION
24850 BLANCO ROAD
SAN ANTONIO, TEXAS 78260**

a Job Order Contractor (“hereafter referred to as “JOC”) (City and JOC hereafter individually referred to as “a Party” and collectively referred to as “the Parties”), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

INDEX

ARTICLE I	Definitions.....	3
ARTICLE II	Initiation of Work.....	4
ARTICLE III	Specification and Drawings.....	6
ARTICLE VI	Permits.....	8
ARTICLE V	Operations Materials and Workmanship.....	8
ARTICLE VI	Site Investigation and Conditions Affecting.....	10
ARTICLE VII	Term.....	11
ARTICLE VIII	Compensation, Invoicing and Payment	11
ARTICLE IX	Inspection and Acceptance	15
ARTICLE X	Additional Requirements	17
ARTICLE XI	Warranty of Work.....	19
ARTICLE XII	Changes in Work and Price.....	20
ARTICLE XIII	Suspension of Work.....	21
ARTICLE XIV	Termination for Convenience of City.....	21
ARTICLE XV	Default.....	23
ARTICLE XVI	Safety.....	24
ARTICLE XVII	City’s Use and Possession Prior to Completion.....	26
ARTICLE XVIII	Non-Exclusivity, Cooperation.....	26
ARTICLE XIX	Workers’ Compensation.....	26
ARTICLE XX	Prevailing Wages.....	29
ARTICLE XXI	Performance Bond.....	30
ARTICLE XXII	Payment Bond.....	31
ARTICLE XXIII	Insurance.....	31
ARTICLE XXIV	Release of Claims/Subrogation.....	35
ARTICLE XXV	Small, Minority, & Women-Owned Business Advocacy.....	36
ARTICLE XXVI	Precedence in Case of Conflict.....	36
ARTICLE XXVII	Waivers	36
ARTICLE XXVIII	Indemnification Provisions.....	37
ARTICLE XXIX	Audit of Records.....	39
ARTICLE XXX	Third Party Antitrust Violations	39
ARTICLE XXXI	Appropriations.....	39
ARTICLE XXXII	Dispute Resolution.....	40
ARTICLE XXXIII	Prohibited Interests in Contracts.....	41
ARTICLE XXXIV	Non-Discrimination.....	42
ARTICLE XXXV	Miscellaneous.	43
ARTICLE XXXVI	Public Information.	44
ARTICLE XXXVII	Conflict Resolution Between Documents.....	45
EXHIBIT A.	General Conditions for City of San Antonio Construction Contracts.....	46
EXHIBIT B.	SBEDA Compliance Provisions and Subcontractor/Supplier Utilization Plan...47	
EXHIBIT C.	Applicable Building Wage Determination.....	48

ARTICLE I

Definitions

- 1.01. “Agreement” and/or “Contract” shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.
- 1.02. “City” shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City’s designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City’s designated representative for the issued Job Order.
- 1.03. “Effective Date” of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.
- 1.04. “Job Order” or “Task Order” shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.
- 1.05. “Liquidated Damages” shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.
- 1.04. “Non-Pre-Priced Items” shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.
- 1.05. “Pre-Priced Items” shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.
- 1.06. “PRIMELink” shall mean City’s internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC’s use of PRIMELink and City shall make the PRIMELink software accessible via the Internet to JOC.
- 1.07. “Substantial Completion” shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.
- 1.08. “Work” shall mean all tasks required of JOC under an issued Job Order.
- 1.09. “Work Schedule” shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City’s approval, prior to beginning any Work by JOC.

ARTICLE II

Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through PRIMELink. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through PRIMELink of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through PRIMELink by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in PRIMELink and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may pertain to the following types of work:

2.03.01. Minor construction, which may involve demolishing office space or finishing out an office space, building out a new floor plan or the like;

2.03.02. Repairs, which may involve fixing broken systems, components or subcomponents of a building, such as doors, electrical outlets, plumbing, flooring, sheetrock, air conditioning systems or the like;

2.03.03. Rehabilitation, which may involve restoring an office, floor, system or a component of a system, to restore functionality

2.03.04. Alteration, which may involve extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring or the like.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Transportation & Capital Improvements (hereafter referred to as "TCI") Task Order Form:

2.04.1. The Contract number, along with JOC's name;

- 2.04.2. The Job Order number and date;
- 2.04.3. The Scope of Work and the applicable technical specifications and drawings;
- 2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;
- 2.04.5. The location of the Work's performance;
- 2.04.6. The agreed total cost to be paid JOC for the Work to be performed;
- 2.04.7. Submittal requirements;
- 2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;
- 2.04.9. Name of JOC's representative for the issued Job Order;
- 2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and
- 2.04.11. Such other information as may be necessary for JOC to perform the Work.

2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.

2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the PRIMELink system.

2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents (\$1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.

2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.

2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

ARTICLE III.

Specification and Drawings

3.01. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

3.01.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.

3.01.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.02. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.03. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.04. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and the Design Consultant by JOC showing, in detail:

3.04.1. The proposed fabrication and assembly of structural elements; and

3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment;

and

3.04.3. The construction and the detailing of elements of the Work.

3.05. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.06. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.07. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing , unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.08. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.09. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall check all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

ARTICLE IV

Permits

City or, if City elects to use a Design Consultant, its Design Consultant shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state and local laws, rules and regulations applicable to performance of the Work. JOC shall include and incorporate the past-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal pursuant to an issued Job Order.

ARTICLE V

Operations, Materials and Workmanship

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2003 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintend Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall superintend the Work and have a competent superintendent satisfactory to City on site at all time who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to both private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

ARTICLE VI
Site Investigation and Conditions Affecting Work

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling and storage of materials;

6.01.2. The availability of labor, water, electric power and roads;

6.01.3. Uncertainties of weather, river stages, tides or similar physical conditions at the site;

6.01.4. The conformation and conditions of the ground; and

6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order;

or

6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC timely has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

ARTICLE VII Term

7.01. **Contract Term.** This Agreement shall be for one (1) year (hereafter referred to as the “Base Term”), with the Base Term beginning on the date of City’s execution of this Agreement. City shall have the right to extend this Agreement through three (3) one-year options (hereafter referred to as an “Option Year”), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option(s) to extend this Agreement, City shall notify JOC in writing of City’s intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City’s sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

ARTICLE VIII Compensation, Invoicing, Payment and Liquidated Damages

8.01. **Compensation.** As full consideration for JOC’s satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City’s normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be performed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

8.02. **Submittal of Pay Application.** At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

8.03. **Monthly Progress Payments.** City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

8.04. **Liquidated Damages.** In the event JOC exceeds the accepted established date for achieving Substantial Completion on an issued Job Order (with any adjustment in the agreed upon calendar days for completion of the Work – via a Change Order – due to encountered unforeseen circumstances or due to any City-requested additional Work) and City has included Liquidated Damages as an element of the issued Job Order, City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City until Substantial Completion of the Work is achieved. Owner also shall be entitled, at any time, to deduct out of any sums due to JOC any or all Liquidated Damages due City. To facilitate this requirement of Liquidated Damages accrual by JOC, JOC shall populate a line item on all subsequent progress payment requests and shall begin accruing Liquidated Damages on a monthly basis, beginning on the established Substantial Completion date forward, until JOC achieves Substantial Completion of the Work

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

- 8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- 8.05.2. waive City’s right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC’s submitted estimates to be incorrect, City shall notify JOC, through PRIMELink, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC’s estimates of completed Work shall be submitted electronically through PRIMELink.

8.7. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City’s Project Representative of JOC’s conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the “Punch List”) JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.8. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

- 8.8.1. City’s issuance of a Certificate of Final Completion upon JOC’s completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

- 8.8.2. JOC's presentation of a properly executed and mathematically correct final pay application; and
- 8.8.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and
- 8.8.4. City's receipt of a consent from JOC's surety, if any.

8.9. **Requirement to Use PRIMELink.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through PRIMELink, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

- 8.10.1. list the different types of Work activities or Work elements;
- 8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;
- 8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and
- 8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

ARTICLE IX

Inspection and Acceptance

9.01. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.02. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.02.1. relieve JOC of responsibility for providing adequate quality control measures;

9.02.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;

9.02.3. constitute or imply acceptance; and

9.02.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.03. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.04. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

9.04.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or

9.04.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.05. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.06. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC's Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.07. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

9.07.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or

9.07.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.08. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.09. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

ARTICLE X

Additional Requirements

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment and materials that are not the property of City. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

10.06. **Preservation and Protection of Structures, Equipment and Vegetation.** JOC shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

10.07. **Preservation and Protection of Improvements and Utilities.** JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

10.08. **Training City Staff.** Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City

ARTICLE XI

Warranty of Work

11.01. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.02. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.03. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.04. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **ARTICLE XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.05. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.06. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.07. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

11.07.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;

11.07.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.07.3. Enforce all warranties for Work performed, to the benefit of City.

11.08 **City Enforcement of Warranties.** City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

11.09. **Pre-Existing Conditions.** City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

ARTICLE XII

Changes in Work and Price

12.01. **Changes in Work.** JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

12.02. **Change Order Processing.** A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through PRIMELink, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through PRIMELink.

12.03. **Change Order Pricing.** Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

12.04. **JOC Time Extension Proposal.** With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through PRIMELink and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **ARTICLE XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

ARTICLE XIII Suspension of Work

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **ARTICLE XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

ARTICLE XIV Termination for Convenience of City

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

- 14.01.1. stop all Work associated with the issued Job Order;
- 14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;
- 14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;
- 14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and
- 14.01.5 deliver to City, as directed by City:

- 14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and
- 14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;
- 14.01.6. complete performance of the Work not terminated by City;
- 14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and
- 14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

- 14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:
 - 14.03.1.1. JOC's cost of the Work;
 - 14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and
 - 14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.
- 14.03.2. A reasonable costs of settlement of the Work terminated, including:
 - 14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- 14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and
- 14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

ARTICLE XV

Default

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

- 15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XVI

Safety

16.01. **Safety Plan.** Within fourteen (14) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.02. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as "OSHA"), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC's Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.03. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC's Work, including hard hats, rain gear, protective foot wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.04. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.05. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.06. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC's project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City's designated JOC Representative by JOC, along with JOC's safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.07. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC's employees and all employees of JOC's Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.08. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.09. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI**, as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI**.

ARTICLE XVII
City's Use and Possession Prior to Completion

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

ARTICLE XVIII
Non-Exclusivity and Cooperation

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

ARTICLE XIX
Workers' Compensation

19.01. The following terms are defined as follows:

19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the Duration of the Project.

19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.

19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.

19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation Statutory, with a Waiver of subrogation in favor of City

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and

19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;

19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;

19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:

19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and

19.09.4.2. a new Certificate of Coverage showing an extension/renewal of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the issued Job Order;

19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;

19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and

19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

ARTICLE XX

Prevailing Wages

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

ARTICLE XXI

Performance Bond

21.1. **Job Order Less Than \$100,000.00.** For issued Job Orders less than \$100,000.00, JOC shall not be required to post a Performance Bond.

21.2. **Job Orders Greater Than \$100,000.00.** For issued Job Orders with a dollar value equal to or greater than \$100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.3. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

21.3.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;

21.3.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal's) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;

21.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and

21.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.

21.4. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI**, a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

ARTICLE XXII

Payment Bond

22.1. **Job Orders Under \$50,000.00.** For all issued Job Orders of \$50,000.00? or less, JOC shall not be required to post a Payment Bond.

22.2. **Job Orders Over \$50,000.00.** For all issued Job Orders with a dollar value equal to or greater than \$50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.3. City's Payment Bond requirements are as follows:

22.3.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.3.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal's) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code Chapter 53.21.1 and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.4. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII**, a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

ARTICLE XXIII

Insurance

23.01. In addition to other insurance requirements of this Agreement, JOC shall maintain, throughout the term of this Agreement, insurance coverage written on an occurrence form, by an insurance provider authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to City, in the following types and amounts:

23.01.1. JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIV** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

- 23.01.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City;
- 23.01.1.2. Employer's Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit, with a waiver of Subrogation in favor of City; (excessive?)
- 23.01.1.3. Commercial General Liability Insurance, to include but not be limited to coverage for the following:
 - A) Personal Injury Liability;
 - B) Independent Contractor's Liability;
 - C) Products and Completed Operations; and
 - D) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring JOC's (and/or JOC's Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.

City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards.

The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.

- 23.01.1.4. Business Automobile Liability Insurance covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
 - 23.01.1.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.
 - 23.01.2. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.
 - 23.01.3. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.02. In addition to the insurance described in **Section 24.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

23.02.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

23.02.2. Loss, if any, shall be adjusted with and made payable to JOC or to City and JOC as trustee for the insureds as their interests may appear.

23.03. Boiler and Machinery Insurance. If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, JOC, JOC's Subcontractors and Sub-Subcontractors in the Work, and City and JOC shall be named insureds.

23.04. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.05. JOC shall provide to City a Certificate of Insurance, evidencing all property insurance policies procured pursuant to this **Article XXIV** and referenced herein and all endorsements thereto, before any exposure to loss may occur.

23.06. Partial occupancy or use in accordance with **Article XVII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

23.07. Each insurance policy required of JOC by this Agreement shall contain the following clauses:

23.07.1. “The insurance provided by JOC is primary to any insurance or self-insurance maintained by the City of San Antonio.”

23.07.2. “Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

23.08. Each insurance policy required by this Agreement, excepting policies for Workers’ Compensation and Employer’s Liability, shall contain the following clauses:

23.08.1. “The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Agreement with the City of San Antonio This policy cannot be invalidated as to City because of JOC’s breach of representation, warranty, declaration or condition of this policy.”

23.08.2. “This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

**with a
copy to:**

Transportation & Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78282-3966
Attention: Contract Services

ARTICLE XXIV Release of Claims/Subrogation

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as “Covered Claims”). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

ARTICLE XXV
Small, Minority, & Women-Owned Business Advocacy

It is the policy of City that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. In achieving that goal, JOC hereby commits to satisfy the SBEDA requirements of this Agreement, as outlined in the SBEDA Subcontractor/Supplier Utilization Plan, attached and labeled as **Exhibit B** hereto and incorporated into this Agreement.

ARTICLE XXVI
Precedence in Case of Conflict

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

- A. Modifications and/or Amendments to this Agreement, if any;
- B. This Agreement, including Attachments;
- C. The Request for Sealed Proposals, including Attachments and addenda (if any);
- D. JOC's submitted Proposal;
- E. Issued Job Orders;
- F. Drawings; and
- G. City's Specifications.

ARTICLE XXVII
Waivers

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

ARTICLE XXVIII INDEMNIFICATION

28.01 JOC covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, JOC, its agents, servants, employees or its Subcontractors and their agents, servants and employees, in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall JOC be liable for claims arising out of accidents resulting from the sole negligence of City, all without however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law.

28.02 In addition to the above, JOC also covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses of every kind and character whatsoever, including, without limitation by enumeration, the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of JOC, its agents, servants, employees, or its Subcontractors and their agents, servants and employees, or in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall JOC be liable for claims arising out of accidents resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law.

28.03 **INTELLECTUAL PROPERTY INDEMNIFICATION.** JOC shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, for infringement of any United States Patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by JOC and its employee or its Subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by JOC and used by either City or JOC within the scope of this Agreement (unless said infringement results directly from JOC's compliance with City's written standards or specifications). JOC does not warrant against infringement by reason of City's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. JOC shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon, expressed in writing and signed by the parties hereto. JOC agrees to consult with City's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City shall make available to JOC any deliverables and/or works made for hire by JOC necessary to the defense of JOC against any claim of infringement for the duration of JOC's legal defense.

28.04 If such infringement claim or action has occurred or, in JOC's judgment, is likely to occur, City shall allow JOC, at JOC's option and expense, (unless such infringement results directly from JOC's compliance with City's written standards or specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to elect to:

- (1) procure for City the right to continue using said deliverable and/or materials;
- (2) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder);
- (3) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or
- (4) if none of the foregoing alternatives is reasonably available to JOC, upon written request, City shall return the deliverable and/or materials in question to JOC and JOC shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Article XXVIII** shall fail to satisfy the third-party claimant, these actions shall not relieve JOC from its defense and indemnity obligations set forth in this **Article XXVIII**.

28.05 The indemnification obligations under this **Article XXVIII** shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to JOC or any Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

ARTICLE XXIX AUDIT OF RECORDS

JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

ARTICLE XXX THIRD-PARTY ANTITRUST VIOLATIONS

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

ARTICLE XXXI APPROPRIATIONS

All obligations of City under this Agreement are funded subject to the discretion of the San Antonio City Council as to whether to appropriate funding for this Agreement for any given year of its term. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, the City may terminate this Agreement and have no further liability under it.

ARTICLE XXXII DISPUTE RESOLUTION

32.01. **Field Level Discussions.** JOC and City agree each first will attempt to resolve disputes or disagreements arising out of an issued Job Order or from this Agreement at the field level, through discussions between the Parties' representatives. If that effort to resolve a dispute or disagreement is unsuccessful, the Director of City's Department of Transportation & Capital Improvements shall intercede and attempt to reach an amicable resolution.

32.02. **Mediation.** Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below herein, the Parties, in good faith, first shall submit the unresolved dispute or disagreement to mediation. The Parties may not assert limitations, laches, waivers and estoppels, based upon their attempts to mediate.

32.03. **Waiver of Mediation Rights.** Filing suit on a claim that, under this **Article XXXII** and the terms of this Agreement, first should be mediated waives the filer's right to demand mediation. But one Party's waiver does not affect another party's right. A defendant does not waive mediation as long as, within a reasonable time after appearing, said defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this **Article XXXII**.

32.04. Any mediation conducted, pursuant to this Agreement, shall be conducted in San Antonio, Bexar County, Texas.

32.05. **Burden to Initiate Mediation.** The Party desiring relief has the burden to initiate mediation. Waiting for a Party to initiate mediation does not waive the other Party's right to it.

32.06. **Mediator Appointment.** If the Parties may agree on a mediator, they shall do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court needs to consider, before appointing a mediator, are whether:

32.06.1. the copy of the Agreement before the court is authentic; and

32.06.2. the Agreement was duly signed and delivered by all Parties agreeing to be bound to mediate.

If neither of those issues cited in **Section 32.06.1** or **Section 32.06.2** herein is denied under oath, the court may appoint a mediator upon motion, without trial.

32.07. **Mediator Fees.** Mediator fees shall be borne equally by the Parties.

32.08. **Emergency Injunctive Relief.** The Parties need not mediate before going to court to seek emergency injunctive relief.

32.09. **JOC's Continued Performance of Work.** JOC shall continue to perform the Work under an issued Job Order and City shall continue to satisfy its payment obligations to JOC under an issued Job Order, pending final resolution of any dispute or disagreements between the Parties.

ARTICLE XXXIII PROHIBITED INTERESTS IN CONTRACTS

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

33.01.1. a City officer or City employee; or

33.01.2. a City officer's or City employee's parent, child or spouse; or

33.01.3. a business entity in which a City officer or a City employee, or his/her parent, child or spouse owns either:

33.01.3.1. ten percent (10%) or more of the voting stock or shares of the business entity; or

33.01.3.2. ten percent (10%) or more of the fair market value of the business entity; or

33.01.4. a business entity in which any individual or entity above listed is:

33.01.4.1. a Subcontractor or Sub-Consultant of JOC on a City contract; or

33.01.4.2. a partner; or

33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement, in compliance with City's Ethics Code.

33.03. JOC acknowledges that City's reliance on the above warranties and certifications is reasonable.

ARTICLE XXXIV NON-DISCRIMINATION

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC's Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through PRIMELink. JOC commits that it shall obtain approval in writing from City prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

ARTICLE XXXV MISCELLANEOUS PROVISIONS

35.01. **Texas Laws Govern.** This Agreement is entered into in San Antonio, Bexar County, Texas. This Agreement's construction and the rights, remedies, duties and obligations arising under this Agreement are governed by the laws of the State Of Texas. But the Texas conflicts of law rules shall not be used to apply the laws of a jurisdiction other than Texas. Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas and venue for any action arising under this Agreement only shall be in San Antonio, Bexar County, Texas.

35.02. **Invalid, Illegal or Unenforceable Clauses.** If any part of this Agreement is found invalid, illegal or unenforceable, said finding shall not affect the remaining parts of this Agreement deemed valid and enforceable and the part of this Agreement found invalid, illegal or unenforceable shall be stricken from the Agreement and the remaining parts of this Agreement shall remain in full force and effect, as if the stricken part never was contained herein.

35.03. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

35.04. **Full and Final Agreement.** This Agreement represents the full and final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and JOC acknowledge and agree there are no oral agreements between the Parties.

35.05. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

35.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries.

35.07. **Notices.** Notices shall be in writing and sent by certified mail, return receipt requested. Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth in the preamble to this Agreement and also to the addresses specified in the Job Order. Notices pertaining to this Agreement – but not to a specific Job Order – shall be sent to the addresses set forth in the preamble to this Agreement. Notice shall be deemed delivered three (3) calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. A Party's address for notice shall be changed only by giving written notice to the other Party.

35.08. **Utilized Wording.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral

does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

35.09. **Captions and Titles.** Article and Section captions/titles used herein are for ease of reference only and do not affect the interpretation of the Articles and Sections.

35.10. **Executed Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, executed counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

35.11. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

35.12. **Director Authority.** The Director of Transportation & Capital Improvements, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

ARTICLE XXXVI PUBLIC INFORMATION

Buyer acknowledges that this Agreement is public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

ARTICLE XXXVII CONFLICT RESOLUTION BETWEEN DOCUMENTS

JOC hereby acknowledges and agrees if anything contained in any JOC-prepared proposals, submittals or any other document prepared by JOC is in conflict with the terms and conditions of this Agreement and/or in conflict with City's General Conditions for City of San Antonio Construction Contracts, which are attached hereto, incorporated herein and labeled as "**Exhibit A**", this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

CITY OF SAN ANTONIO

ALPHA BUILDING CORPORATION

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Agreement is approved as to form:

San Antonio City Attorney's Office

EXHIBIT A
GENERAL CONDITIONS FOR CITY OF SAN ANTONIO
CONSTRUCTION CONTRACTS

EXHIBIT B

SBEDA SUBONTRACTOR/SUPPLIER UTILIZATION PLAN

EXHIBIT C

APPLICABLE BUILDING WAGE DETERMINATION

BUILDING TX140280 MOD #1 PUBLISHED 11/07/2014 TX280