



City of Sedona

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# CITYWIDE PAVING JOB ORDER CONTRACT

CONTRACT NO. **2013-789-COS**

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**CITY OF SEDONA**

Paving Job Order Contract

**CONTRACT NO. 2013-789-COS**

THIS AGREEMENT, made and entered by and between City of Sedona, hereinafter designated the "CITY" and "JOC Contractor" hereinafter designated the "JOC CONTRACTOR"

**RECITALS**

- A. The City Manager of the City of Sedona, Arizona, is authorized and empowered by the City Council to execute contracts for construction and related services.
- B. The City intends to contract for construction and related services for one or more Job Orders.
- C. The JOC Contractor has represented to the City the ability to provide or procure the required construction and related services and, based on this representation, the City engages JOC CONTRACTOR for these services.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the JOC Contractor as follows:

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**ARTICLE 1 – DEFINITIONS AND TERMS**

When the Contract indicates that work shall be "accepted, acceptable, approve, authorized, condemned, considered necessary, contemplated, deemed necessary designated, determined, directed, disapproved, established, given, indicated, insufficient interpreted, ordered, permitted, rejected, required, reserved, satisfactory, specified sufficient, suitable, suspended, unacceptable, unsatisfactory," it shall be understood that these expressions are followed by the words "by the City of Sedona".

Wherever the following abbreviations, terms, or pronouns are used in the: specifications, plans, or other Contract Documents, the intent and meaning shall interpreted as follows:

**ABBREVIATIONS**

**AAC**            American Architecture Committee

<b>AAN</b>	American Association of Nurserymen
<b>AAR</b>	Association of American Railroads
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACI</b>	American Concrete Institute
<b>ADEQ</b>	Arizona Department of Environmental Quality
<b>ADOT</b>	Arizona Department of Transportation
<b>AGC</b>	Associated General Contractors of America
<b>AI</b>	Asphalt Institute
<b>AIA</b>	American Institute of Architects
<b>AISC</b>	American Institute of Steel Construction
<b>AISI</b>	American Iron and Steel Institute
<b>AITC</b>	American Institute of Timber Construction
<b>ANSI</b>	American National Standards Institute, Inc.
<b>ARA</b>	American Railway Association
<b>ARS</b>	Arizona Revised Statutes
<b>AREA</b>	American Railway Engineering Association
<b>ARTBA</b>	American Road and Transportation Builders Association
<b>ASCE</b>	American Society of Civil Engineers
<b>ASLA</b>	American Society of Landscape Architects
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>ATSSA</b>	American Traffic Safety Services Association
<b>AWG</b>	American Wire Gauge
<b>AWPA</b>	American Wood Preservers' Association
<b>AWS</b>	American Welding Society
<b>AWWA</b>	American Water Works Association
<b>CRSI</b>	Concrete Reinforcing Steel Institute
<b>EIA</b>	Electric Industries Association
<b>FHWA</b>	Federal Highway Administration, Department of Transportation
<b>FSS</b>	Federal Specifications and Standards
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>IES</b>	Illuminating Engineering Society
<b>IMSA</b>	International Municipal Signal Association
<b>IPCEA</b>	Insulated Power Cable Engineers Association
<b>ITE</b>	Institute of Transportation Engineers
<b>MAG</b>	Maricopa Association of Governments
<b>MIL</b>	Military Specifications
<b>MUTCD</b>	Manual on Uniform Traffic Control Devices
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers' Association
<b>NIST</b>	National Institute of Standards and Technology
<b>NSF</b>	National Sanitation Foundation (NSF)
<b>SAE</b>	Society of Automotive Engineers
<b>UL</b>	Underwriters Laboratories, Inc.

## DEFINITIONS

“Advertisement” - A public announcement inviting proposals for work to be performed or materials to be furnished.

“Agreement” or “Job Order Contract” or “JOC” means this fully executed agreement between City and JOC Contractor, and includes other documents itemized and referenced in or attached to and made part of this Agreement.

“Award” - The acceptance by the City of a proposal.

“Basis of Payment” -The terms under which "work" is paid, as a designated pay item accordance with the quantity measured and the pay unit.

“Bidder” - Any individual, partnership, joint venture, firm or corporation submitting a proposal for the advertised work, acting directly or through a duly authorized representative.

“Calendar Day” -Each and every day shown on the calendar, beginning and ending at midnight.

“Certified Invoice” -An invoice from a supplier which has been reliably endorsed by the Contractor guaranteeing that the material was purchased and received for the project and establishing the value of the material.

“Change Order” means a written instrument issued after execution of a Job Order Amendment signed by City and JOC Contractor, stating their agreement upon all of the following: the scope of the change in Job Order; the amount of the adjustment to the Job Order Price; and the extent of the adjustment to the Job Order Time.

“City” means the City of Sedona, Arizona.

“City’s Representative” means the person designated in Subdivision 8.4.1.2. of this agreement.

"City’s Senior Representative" means the person designated in Subdivision 8.4.1.1. of this agreement.

“Claim” -A written demand or request for additional compensation or additional time submitted to the Engineer that:

1. Contains the words “This is a claim...”, within its Subject line or the first paragraph
2. Cites the contractual basis for the demand or request

3. Relates the Contractual basis cited to factual events occurring or that have occurred within the project.

“Completion Date” -The date on which the contract work is specified to be fully completed, but not limited to clean up of the work site and staging areas and submittal of record drawings.

“Construction Documents” means the plans, specifications and drawings prepared by a Design Professional or technically competent person and approved by the City after correcting for permit review requirements and incorporating addenda and approved Change Orders.

“Contract Amendment” means a specific written concurrence between the Owner and the JOC Contractor for changes to and/or extension of this Agreement.

“Contract Change Order” - A written order issued to the Contractor by the City covering extra work, additions or alterations to the plans and specifications, and establishing the basis of payment and time adjustment for the work affected by the changes. The Contract Change Order is the only method authorized for changing the Contract.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the JOC Contractor:

- (i) Change Orders;
- (ii) Job Order Amendments
- (iii) Contract Amendments
- (iv) This Agreement, including all exhibits and attachments: General Conditions P. GC1-GC59; Special Conditions P. SC1-SC4; Description of and Basis of Payment for Unit Price JOC Work Activity P. DB5-DB22; Technical Specifications P. T23-T138
- (v) JOC Contractor’s Proposal (if any)
- (vi) JOC Contractor Statement of Qualifications.

“Contract Price” means the amount or amounts set forth in Article 5 subject to Contract Amendments in accordance with this Agreement.

“Contract Services” means the services required by the Contract Documents.

“Contract Time(s)” means the time set forth in Article 4 subject to Contract Amendments in accordance with this Agreement.

“Contractor” - Party contracting directly with the City to furnish and perform all work and services in accordance with the Contract Documents.

“Cost-coefficient” means the multiplier shown in Division 5.2.2 used to calculate Job Order Price.

“County” -The county in which the work is to be done

“Day(s)” means calendar days unless otherwise specifically noted in the Contract Documents.

“Design Professional” means a qualified, licensed design professional who furnishes design and/or construction administration services.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated or frequently encountered for the type and scope of work indicated in the Job Order Amendment or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. Differing Site Conditions may beneficially or adversely impact the work required.

“Duration of the Work” means the number of Days from a Job Order Notice To Proceed to Substantial Completion.

“Engineer”- The City Engineer; or his designated representative

“Extra Work” -Work not provided for in the Contract as awarded but determined by the City to be essential to the satisfactory completion of the Contract within its intended scope.

“Final Acceptance” means the completion of a Job Order as prescribed in Division 4.4.

“Gender and Number” -References are made as if masculine in gender and singular in number unless neuter gender is appropriate in the context; however, the use of any gender shall be applicable to all genders and the use of singular number shall include the plural and conversely.

“Inspector” - A person, persons, or firm authorized by the Engineer to make detailed reviews, observations, reports and determinations of contract performance.

“JOC Contractor” means JOC CONTRACTOR selected by the City to provide or procure construction and design services as detailed in this Agreement.

“JOC Contractor’s Representative” means the person described in Subdivision 8.4.2.2. of this agreement.

“JOC Contractor’s Senior Representative” means the person described in Subdivision 8.4.2.1. of this agreement.

“Job Order” or “Project” means a specific scope of Contract Services done pursuant to a Job Order Amendment.

“Job Order Amendment” means a specific written agreement between the Owner and the JOC Contractor for a Job Order including a scope, a Job Order Price, a Duration of the Work and any special conditions that may apply to be performed under this Agreement. The Job Order Amendment shall be considered to include as referenced or attached any plans, technical specifications, special provisions or drawings and specifications sufficient to locate the work site, describe the scope of work and allow the contractor to submit a complete price for the work, and the JOC Contractor’s proposal either by reference or inclusion.

“Job Order Price” means the amount calculated on the Unit Prices, Cost-coefficient and Special Items as prescribed in Division 5.2.

“JOC Payment Request” means the City form used by the JOC Contractor to request progress payments for Job Orders in accordance with Article 7.

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

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

“May” - Used to refer to permissive actions.

“Method of Measurement” -The manner in which a pay item is measured to conform with the pay unit.

“Minor Design Services” – Small in scope and up to a dollar figure of \$5000.00

“Notice of Claim” - A written notification submitted to the Engineer that a demand or request for additional compensation potentially may be made. The notification shall

1. Contain the words “Notification of a Claim” within its Subject line or the first paragraph
2. Describe the occurrence which is the reason that the Notice of Claim is being presented

“Notice to Proceed,” (NTP) means a written notice given by the City to the JOC Contractor fixing the date on which the JOC Contractor will start to perform the JOC Contractor’s obligations under this Work Order.

“Plans” - The drawings and pictures depicting the location and special orientation of the work to be done.



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

“Project” -The work to be completed pursuant to this contract.

“Proposal” -A standard form plus information supplied by the City, which contains spaces for completion by the Bidder which, when completed in its entirety and executed by the Bidder, along with all required additional documents, shall constitute the Bid. Said Bid shall constitute the Contractor's offer to perform all Work required as set forth in the Contract Documents for the amount of money stated in the Bid.

“Proposal Form” - The documents furnished by the City on which the offer of a bidder is submitted.

“Proposal Guaranty” - The security furnished with a proposal to Guaranty that the bidder will enter into the Contract if the proposal is accepted.

“Record Documents” means the documents created pursuant to Section 2.10.

“Right Of Way” - A general term denoting land, property, or interest therein, acquired for project related purposes including, but not limited to construction, work area, movement of equipment and other necessary and required project activities.

“Salvable Material” - Material that can be saved or salvaged. Unless otherwise designated or directed by the City or shown on the plans, all salvable material shall become the property of the Contractor. Asbestos, hazardous substances or materials, hazardous waste or any other regulated substances or materials shall be disposed of in accordance with all applicable federal, state and local regulations.

“Samples” means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Shall” - Refers to mandatory actions by either the Contractor or the City.

“Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the JOC Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which a Job Order is located.

“Special Item(s)” means Work that is not included in the Unit Prices as amended and is unique to a specific Project.

“Subcontractor” or “Sub consultant” means any person or entity retained by JOC Contractor as an independent contractor to perform a portion of the Contract Services and shall include material, men and suppliers.

“Substantial Completion” means when a Job Order, or an agreed upon portion of a Job Order, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes and the City has pursuant to this contract accepted the work as substantially complete.

“Superintendent” - The Contractor's authorized representative in charge of the Work.

“Unit Prices” means the prices shown on Exhibit A subject to adjustment in accordance with Article 6.

“Work” means any construction and related services, including procuring and furnishing materials, equipment, services and labor, reasonably inferable from a Job Order Amendment.

## **Article 2 - JOC Contractor’s Services and Responsibilities**

### **2.1 General Services**

#### **2.1.1 Contractor’s Understanding**

A. It is understood and mutually agreed that by submitting a proposal, the Contractor acknowledges that he has carefully examined all documents pertaining to the Work, the locations, accessibility, and general character of the site of the Work and all existing buildings and structures within and adjacent to the site, and has satisfied himself as to the nature of the Work, the condition of existing buildings and structures, the conformation of the ground, subsurface conditions, the character, quality, and equipment, machinery, plant, and any other facilities needed preliminary to and during prosecution of the Work, the general and local conditions, the construction hazards, and all other matters, including but not limited to any labor situation which can in any way affect the Work under the Contract. It is further mutually agreed that by submitting a proposal, the Contractor acknowledges that he has satisfied himself as to the feasibility sufficiency and correctness of the Contract Documents for the construction of the Work and that he accepts all the terms, conditions, and stipulations contained therein.

B. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions, or other obligations set forth in any of the Contract Documents.

- C. The Contractor in the execution of the Work shall conform to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over employment discrimination, wages and working conditions, and the construction of the Work, including but not limited to all construction codes, O.S.H.A. Requirements, and safety codes, which may apply to (1) performance of the Work; (2) protection of adjoining and adjacent property; (3) maintenance of passage-ways, guard fences or other protective facilities; and shall obtain all permits and pay for licenses and approvals necessary for the construction of the Work and give all required notices.
- D. Prior to the award of the Job Order Contract, the successful bidder must apply for business registration in the City of Sedona and obtain a City of Sedona business license within 30 days of passage of business license legislation or a written determination that a business license is not required issued by the City's Business License Section. The business license must remain valid throughout the life of this contract. Contractor must provide a copy of this business license or a written determination prior to award and at contract renewal.
- E. The Contractor understands that, unless specifically stated otherwise in the contract documents, the intent of the contract documents is to provide complete and operable facilities. The Contractor's bid amount for this project, therefore, shall be and is considered to be for completion in conformity with this understanding, regardless of whether some aspect of the work to be performed is named as a separate bid item or not.
- F. It is understood and mutually agreed that this project is unique in that it represents a continuous, full-time daily service to the City and the people it serves. For this reason, the Contractor must recognize that he and his employees shall act in a courteous and professional manner at all times. The City does not guarantee any use of the equipment or services described in this Contract and, therefore, no adjustments will be made because of non-use. The City of Sedona is not obligated or limited to having only the Contractor perform the tasks identified under the bid items and that the City may procure services through other providers of its choice. The Contractor further understands that if the Contractor is not available, refuses or declines to provide the services contracted for, although the City may obtain the services through others, the City may require reimbursement from the Contractor for any costs incurred above those the City would not have incurred had the Contractor provided the service.

**2.1.2** The JOC Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities necessary to accomplish in the Job Order Amendment for which it is issued a Job Order Notice to Proceed in accordance with this Agreement. The City may determine it is in its best interest

to furnish materials and equipment for a specific Job Order in accordance with the Job Order Amendment.

- 2.1.3** The Work shall be performed in a good, workmanlike and substantial manner and to the satisfaction of the City Engineer and under the direction and supervision of the City Engineer, or his properly authorized agents, within the care and skill of a qualified contractor in Sedona, Arizona.

**Legal Residency Status.** Subject to existing law, and regulations, illegal or undocumented aliens will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented aliens. Under the terms of this agreement, the contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this contract.

- 2.1.3.1** When practical the City of Sedona will require that the Contractor provide estimates of cost in prior to being authorized to proceed with work. The Contractor shall give due diligence in preparing such estimates that they be complete as to a general description of the work to be performed, the type of bid items applicable to the work, unit costs, an estimate of the time required for the work, and totals for performance of the work and its various parts.

- 2.1.3.2** The Contractor is not required to perform survey or engineering design. The City of Sedona shall procure these services as needed. Minor engineering and geotechnical services may be required and the Contractor is responsible for those services. The Contractor shall identify engineers it proposes to use for such services. Minor services are considered engineering services for which the reasonable cost is estimated at \$15,000 or less. The City requires record drawings of work performed. This may include shop drawings, sketches, maps, and line drawings indicating the performed work or work to be performed, when standard drawings need to be supplemented in order to define the work. The Contractor shall state upon completion of the work that it has been completed and that there are no latent defects. City inspection or lack thereof shall not excuse defective work.

- 2.1.4** JOC Contractor's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Contract Services. A JOC Contractor's Representative will be assigned for each

Job Order. JOC Contractor's Representative shall communicate regularly with the City and shall be vested with the authority to act on behalf of JOC Contractor.

## **2.2 Government Approvals and Permits**

**2.2.1** Unless otherwise provided, JOC Contractor shall obtain all necessary permits, approvals and licenses, not obtained or required to be specifically obtained by the City for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. A City of Sedona business license is required and must be kept current from year to year (See section 2.1.1.D.). The JOC Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.

**2.2.2** Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements. The JOC Contractor shall comply with the provisions of all permits, licenses and agreements as they bear on his activity and responsibility for the project, regardless of whether the City or the JOC Contractor obtained the permit license or agreement.

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

**2.2.4** JOC Contractor shall be responsible for all other permits and review fees not specifically listed in Division 2.2.3 above.

**2.2.5** JOC Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until completion of the project, unless otherwise stated in the written document approving Substantial Completion of the Project. Reasonable minor utility relocations cost up to \$3000 are the responsibility of the JOC Contractor. Arrangements for construction water are the JOC Contractor's responsibility.

## **2.3 Pre-construction Conference**

**2.3.1** After execution of a Job Order Amendment and prior to the commencement of any Work on any Job Order, a pre-construction conference will be scheduled. If the volume of Job Order work contemplated and/or ongoing work is sufficient, the City or JOC contractor may request that several projects be discussed in a special meeting or routine ongoing meetings held regarding work under this contract.

- 2.3.2** The purpose of this conference is to establish a working relationship between the JOC Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.
- 2.3.3** At a minimum, attendees shall include JOC Contractor Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the JOC Contractor's safety officer official.
- 2.3.4** The Job Order Notice to Proceed date will be confirmed.

**2.4 Control of the Work**

- The JOC Contractor shall properly guard and protect all partially finished work, and shall be responsible for the same until the entire Job Order is completed and accepted by the City. Any payment for completed portions of the work shall not release the JOC Contractor from such responsibility; however, he shall turn over the entire work in full accordance with the specifications or Job Order Amendment before final settlement shall be made. In case of suspension of the work for any cause whatever, the JOC Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Project and shall erect any necessary temporary structures, signs, or other facilities at no cost to the City.
- 2.4.1** As part of completing work under the Job Order Amendment, the JOC Contractor shall remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the work from the site. Clean dirt or other material generated by the project from storm drainage pipes and the public roadway should also be removed unless otherwise excused by the Engineer.
- 2.4.2** Unless otherwise provided in the Job Order Amendment to be the responsibility of City or a separate contractor, JOC Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit JOC Contractor to complete the Work consistent with the Job Order.
- 2.4.3** JOC Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. JOC Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.4.4** Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by the JOC Contractor.

- 2.4.5** JOC Contractor, its designee or the JOC Contractor's Superintendent shall be present at the Work at all times that construction activities are taking place.
- 2.4.5.1** All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman, superintendent or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.4.5.2** In the event of noncompliance of this Division 6.1, the City may require the JOC Contractor to stop or suspend the Work in whole or in part.
- 2.4.6** Where the Job Order requires that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the JOC Contractor's responsibility to ensure the Subcontractor employed for such work is approved.
- 2.4.7** Before ordering materials or doing work, the JOC Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the City for resolution before proceeding with the work.
- 2.4.8** The JOC Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the JOC Contractor with the Job Order before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once. Failure to do so would render any change order requested by the JOC Contractor void.
- 2.4.9** The Contractor shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This work shall be performed or supervised by a licensed civil engineer or surveyor.
- 2.4.10** Any person employed by the JOC Contractor or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by JOC Contractor or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The JOC Contractor or Subcontractor shall hold the City harmless from damages or claims, which may occur in the enforcement of this section.
- 2.4.11** JOC Contractor assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such

performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.4.12** JOC Contractor shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, JOC Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.4.13** On a daily basis, the JOC Contractor shall prepare a Contractor's Daily Report. The City Maintenance Superintendent or Engineer will provide a sample report format to the Job Order Contractor. The report shall detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated and all personnel on the site inclusive of subcontractors. The Daily Reports shall be submitted on a daily basis, unless otherwise arranged, to the Inspector. The Daily Reports shall also be made available to the City's Representative upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.

## **2.5 Control of the Work Site**

**2.5.1** Throughout all phases of construction, including suspension of Work, JOC Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit JOC Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to receiving Substantial Completion of the Work, or a portion of the Work, JOC Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

**2.5.2** JOC Contractor shall take all necessary steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City.

**2.5.3** JOC Contractor shall maintain ADA accessibility requirements during construction activities in an occupied building or facility, pedestrian ways and sidewalks. ADA accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. JOC Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.



- 2.5.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the JOC Contractor. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the JOC Contractor.
- 2.5.5** The JOC Contractor is responsible for the cost to dispose of all waste products including excess earth material, which will not be incorporated into the work under this Agreement. The waste product referred to herein shall become the property of the JOC Contractor. The JOC Contractor shall provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and shall make necessary arrangements for such disposal. Any disposal/dumping of waste products or unused materials shall conform to applicable Federal, State and Local Regulations.
- 2.5.6** The JOC Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The JOC Contractor will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the JOC Contractor as the JOC Contractor's representative at the site. The representative shall have full authority to act on behalf of the JOC Contractor and all communications given to the representative shall be as binding as if given to the JOC Contractor. The representative shall be present on the site at all times as required to perform adequate supervision and coordination of the work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.
- 2.5.7** The JOC Contractor shall plan and conduct all tasks to incorporate best management practice to minimize in accordance with Best Management Practices and governing regulations stormwater pollution and air pollution.
- 2.5.8** The JOC Contractor shall plan and conduct all tasks in a manner to minimize to the extent practicable the production of waste products.
- 2.5.9** Each work proposal presented by the JOC Contractor shall identify measures which will be taken to reduce production of waste, reduce air pollution, reduce noise pollution, storm water pollution, assure consideration of public convenience issues such as trash pickup, and pedestrian, bicycle and motorized vehicular movement. A reasonable cost for such measures shall be identified and subject to deduction for failure to aggressively implement the measures. The measures shall be subject to review and acceptance by the City.
- 2.5.10** The JOC Contractor shall maintain access for trash pick-up, mail delivery and any street closure notification issues

## **2.6 Shop Drawings, Product Data and Samples**

**2.6.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the

Work for which submittals are required the way the JOC Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

**2.6.2** The JOC Contractor shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved schedule as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the JOC Contractor, which are not required by the Contract Documents, may be returned without action.

**2.6.3** The JOC Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals. Three submittals are required unless otherwise specified in the Job Order Amendment.

**2.6.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the JOC Contractor represents that the JOC Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Job Order.

**2.6.5** The JOC Contractor shall not be relieved of responsibility for deviations from requirements of the Job Order by the City 's approval of Shop Drawings, Product Data, Samples or similar submittals unless the JOC Contractor has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The JOC Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City 's approval thereof.

**2.6.6** The JOC Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.

**2.6.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

**2.6.8** When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.7 Quality Control, Testing and Inspection**

### **2.7.1 Inspection**

Inspectors may be stationed on the work site to report to the City's Representative or his Designee as to the progress of the work, the manner in which it is being performed, and also to report whenever it appears that material furnished or work performed by the JOC Contractor fails to fulfill the requirements of the specifications and Agreement. The Inspector may direct the attention of the JOC Contractor to such failure or infringement but such inspection shall not relieve the JOC Contractor from any obligation to furnish acceptable materials or to provide completed construction that is satisfactory in every particular.

- 2.7.2** In case of any dispute arising between the Inspector and the JOC Contractor as to material furnished or the manner of performing the work, the Inspector shall have the authority to reject materials or suspend the work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors shall in no case act as foremen or perform other duties for the JOC Contractor or interfere with the management of the work by the JOC Contractor.
- 2.7.3** Inspection or supervision by the City's Representative or Designee shall not be considered as direct control of the individual workman and his work. The direct control shall be solely the responsibility of the JOC Contractor.

## **2.8 Materials Testing**

All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Job Order.

- 2.8.1** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection of the City.
- 2.8.2** The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and test shall be made in accordance with the latest editions of the standard methods of AASHTO or ASTM, DSPM and MAG supplements.
- 2.8.3** The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing. Non-special testing will be paid by the Contractor unless otherwise agreed.
- 2.8.3.1** When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance will be paid for by the JOC Contractor.
- 2.8.3.2** When the first and subsequent tests indicate noncompliance with the Job Order, all retesting shall be performed by the same testing agency.

- 2.8.3.3** The JOC Contractor will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.8.4** At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.8.5** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the JOC Contractor, unless otherwise provided in the Job Order.
- 2.8.6** JOC Contractor's convenience and quality control testing and inspections shall be the sole responsibility of the JOC Contractor and paid by the JOC Contractor.
- 2.9 Approved Alternates**  
Plans and specifications may contain references to equipment and/or materials (patented or unpatented) or "approved alternate(s)." Such references shall be regarded as establishing a standard of quality, finish, appearance or performance, or as indicating a selection or design based upon compatibility with existing equipment, materials or details of construction inherent to the project design. Such references shall not be construed as limiting the selection to a specified item, source or design detail.
- 2.9.1** After execution of the Job Order Amendment, the JOC Contractor may submit a proposal to the City for approved alternates for items referenced in plans and specs. If the City approves the proposal for alternates a Change Order will be issued to reflect such changes. The proposal shall include all information necessary for proof of quality and suitability for substitution including benefits, engineering design and data (calculations) and/or detailed plan modifications which may be required by the substitution. The JOC Contractor shall submit additional information and/or samples when required.
- 2.9.2** The City's Representative, will evaluate the information submitted, perform tests when necessary and make comparisons in order to approve or reject the proposal. If rejected, the City's Representative shall give notice of rejection to the JOC Contractor.
- 2.9.3** The Specifications may reference equipment or materials "or alternate". The reference to "or alternate" shall be construed to mean "or approved alternate" in every instance. Use of an alternate or substitute item shall be allowed only if approval was received as outlined in this Section.
- 2.10 Project Record Document**

**2.10.1** During the construction period, the JOC Contractor shall maintain at the jobsite a set of project plans and specifications of the Construction Document drawings and shop drawings for Project Record Document purposes.

**2.10.1.1** The JOC Contractor shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The JOC Contractor shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Culvert size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

**2.10.1.2** The JOC Contractor shall mark completely and accurately Record Documents prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location. JOC Contractor shall mark drawings with detail and precision in accordance with these specifications, but not less than what it requires of the City and utilities in the marking of their facilities.

**2.10.1.3** The JOC Contractor shall mark Project Record Drawings sets with red erasable colored pencil.

**2.10.1.4** The JOC Contractor shall note Request for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

**2.10.1.5** The JOC Contractor shall at the time of Substantial Completion, submit Record Documents prints and Shop Drawings to the City or its representative for review and comment.

**2.10.2** Immediately upon receipt of the reviewed Record Documents from the City, the JOC Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City:

**2.10.2.1** The original copy of the Record Documents (redline mark-ups).

## **2.11 Project Safety**

- 2.11.1** The industrial environment in which the JOC Contractor for the City of Sedona operates may on occasion present a potential safety and health hazard to any who may be on the job site, if applicable governmental regulations and sound work rules for maintaining a safe place and environment are not followed. The Occupational Safety and Health Act (OSHA) and the City of Sedona loss control procedures are the minimum standard for safety and environmental protection and must be fully complied with at all times. All work shall be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures. The JOC Contractor will be required to attend a City safety briefing session at the pre-construction meeting. The session shall be attended by the City's Representative, the designated Public Works staff, and a JOC Contractor's representative.
- 2.11.2** Public Works makes available a packet, which contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.
- 2.11.3** JOC Contractor shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- 2.11.4** JOC Contractor shall contact the City's Representative and the Public Works Department within one hour of the occurrence of an accident or injury arising out of the JOC Contractor's work under this Agreement.
- 2.11.5** JOC Contractor employees are encouraged to abate or remedy any unsafe act or condition, which may arise in the course of the JOC Contractor's work under this Agreement.
- 2.11.6** The City reserves the right to conduct safety audits at the job site and stop unsafe acts at any time. In addition, the City shall be notified should any OSHA inspection occur at a City job site.
- 2.11.7** JOC Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.8** JOC Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.9** JOC Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to

the Work. Unless otherwise required by the Contract Documents, JOC Contractor's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

**2.11.10** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with JOC Contractor's personnel, Subcontractors and others as applicable.

**2.11.11** JOC Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

**2.11.12** JOC Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work. This written report will identify the injured party(s), the apparent cause of the injury, the witnesses to the injury, the response to the injury, and any other additional information that OSHA may require to be provided to the City.

**2.11.13** JOC Contractor's responsibility for safety under this Section 2.12 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

**2.11.14** JOC Contractor and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Sedona, that come under the Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All JOC Contractors and all Subcontractors using chemicals on City of Sedona property, shall use only the safest chemicals, with the least harmful ingredients to human and animal health. These chemicals shall be approved for use by a City of Sedona representative prior to bringing them on property. Some chemicals that are automatically approved are legal fuel and non-accumulating, biodegradable, non-toxic chemicals.

JOC Contractor and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working

hours. Adequate ventilation shall be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, JOC Contractor and Subcontractors are hereby informed of the presence of (or possible presence of) chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the City of Sedona for specific information relative to the type of chemicals that the City believes may be present and location of appropriate Material Safety Data Sheets.

**2.11.15** Unless included in the Work, if the JOC Contractor encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the City.

**2.11.16** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the JOC Contractor shall not resume work in the affected area until the material has been abated or rendered harmless. The JOC Contractor and the City may agree, in writing, to continue work in non-affected areas onsite. An extension of Contract Time may be granted in accordance with Article 6.

**2.11.17** Upon discovery of hazardous materials the JOC Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

## **2.12 Warranty**

The provisions of M.A.G., Section 108.8 shall apply with the following additional requirements:

**2.12.1** Should the JOC Contractor fail to begin repairs or corrective work within fourteen (14) calendar days after receipt of written notice from the City, the City may perform the necessary work and the JOC Contractor hereby agrees to reimburse the City for the actual cost.

**2.12.2** The warranty period on any part of the work so repaired or replaced shall be extended for a period of 1 year from the date of such repair or replacement.

**2.12.2.1** This guarantee will not apply to damage caused by normal wear and tear or by acts beyond the JOC Contractor's control.



**2.12.3** JOC Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than JOC Contractor or anyone for whose acts JOC Contractor may be liable.

**2.12.4** JOC Contractor 's warranty obligation shall be for one year unless otherwise stated in the Job Order Amendment.

**2.12.5** Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section 2.12 or the Contract Documents. JOC Contractor will provide City with all manufacturers' warranties upon Substantial Completion of each job order.

### **2.13 Correction of Defective Work**

**2.13.1** JOC Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A Progress Payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Contract Documents.

**2.13.2** During the Work, JOC Contractor shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If JOC Contractor fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide JOC Contractor with written notice that City will commence correction of such nonconforming Work with its own forces.

**2.13.3** JOC Contractor shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above. These measures include but are not limited to timely correction of the Work. If the JOC Contractor fails to initiate necessary measures with such work within seven days of receipt of written notice from the City, the City, in addition to any other remedies provided under the Contract Documents, may provide JOC Contractor with written notice that the City will commence correction of such nonconforming Work with its own forces.

**2.13.4** If the City does perform such corrective Work, JOC Contractor shall be responsible for all reasonable costs incurred by the City in performing such correction.

**2.13.5** The JOC Contractor shall immediately respond to any nonconforming Work that creates an emergency.

- 2.13.6** The one-year period referenced in Division 2.13.1 above applies only to JOC Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding JOC Contractor's other obligations under the Contract Documents.

### **Article 3 - City's Services and Responsibilities**

- 3.1 Duty to Cooperate.** City shall, throughout the performance of the Contract Services, cooperate with JOC Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate JOC Contractor's timely and efficient performance of the Contract Services and so as not to delay or interfere with JOC Contractor's performance of its obligations under the Contract Documents.
- 3.2 Information and Services.** City shall furnish the JOC Contractor, at no cost to the JOC Contractor, the following information or services for this project:
- 3.2.1** One copy of data pertinent to the work. However, the JOC Contractor can request from the City information required for the project.
- 3.2.2** Project funding and budget allocations and any changes affecting the funding or budget allocations.
- 3.2.3** For purpose of determining the Job Order Price, any Plans and Specifications.
- 3.3 City's Representative**
- 3.3.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit JOC Contractor to fulfill its obligations under the Contract Documents.
- 3.3.2** City's Representative shall also provide JOC Contractor with prompt notice if it observes any failure on the part of JOC Contractor to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.
- 3.4 Design Professional Services**
- 3.4.1** The City may contract separately with one or more Design Professionals to provide architectural and/or engineering design of the Project in accordance with the provisions of A.R.S. §34-603. This does not relieve the JOC Contractor of their design responsibility.
- 3.4.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work

### **3.5 City's Separate Contractors**

City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, JOC Contractor in order to enable JOC Contractor to timely complete the Work consistent with the Contract Documents.

## **Article 4 - Contract Time and Job Order Time**

### **4.1 Contract Time**

**4.1.1** Contract Time shall commence on the Notice to Proceed date for this Agreement and shall be for one year with the option to extend for four years in one-year increments.

**4.1.1.1** The option to extend will be exercised based on the contractor's successful performance and the needs of the City. This option to extend may be exercised at the sole discretion of the City.

**4.1.1.2** A Contract Amendment will be processed for each extension and will commence on the anniversary date of the Notice to Proceed.

**4.1.2** This Agreement will remain in full force and effect during the performance of any Job Order.

**4.1.3** Work that has been started before the termination date of the contract can be completed after the termination date, however, no new Job Order Amendments may be issued.

### **4.2 Job Order Time**

**4.2.1** Job Orders may be issued at any time during the term of this Agreement.

**4.2.2** Each Job Order will include a Job Order Notice to Proceed date, Duration of the Work as determined pursuant to Division 5.2 and a calculated Substantial Completion date.

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

**4.2.4** Each Job Order Time shall be subject to adjustment in accordance with Article 6.

### **4.3 Substantial Completion**

- 4.3.1** Substantial Completion of each Job Order is when all construction has been completed with the exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop Job Order Time.
- 4.3.2** Prior to notifying the City in accordance to Division 4.3.3 below, the JOC Contractor shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The JOC Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the JOC Contractor to complete all Work in accordance with the Contract Documents.
- 4.3.3** JOC Contractor shall notify the City in writing when it believes a Job Order, or to the extent permitted in the Contract Documents, a portion of the Job Order, is substantially complete.
- 4.3.4** Within five (5) days of City's receipt of JOC Contractor's notice, City and JOC Contractor will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.3.5** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and JOC Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance.
- 4.3.6** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.3.5 above, (ii) JOC Contractor and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and JOC Contractor agree that City's use or occupancy will not interfere with JOC Contractor's completion of the remaining Work.
- 4.4** **Final Acceptance.** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance City and JOC Contractor will jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.3.5. The City will issue a Final Acceptance Letter after the full work is complete.
- 4.5** **Liquidated Damages.**

- 4.5.1** JOC Contractor understands that if Substantial Completion is not attained within the Duration of the Work as adjusted for each Job Order, City will suffer damages, which are difficult to determine and accurately specify. JOC Contractor agrees that if Substantial Completion is not attained within the Duration of the Work as adjusted, JOC Contractor shall pay City the amount prescribed in Division 4.5.2 below as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Duration of the Work as adjusted.
- 4.5.2** The following will be the liquidated damages for each Job Order unless a specific amount has been determined in the Job Order Amendment.

**LIQUIDATED DAMAGES**

<b>Original Job Order Amount</b>		<b>Daily Charges</b>
<b>From more than</b>	<b>To and including</b>	<b>Calendar Day or Fixed Date</b>
<b>\$000</b>	<b>\$10,000</b>	<b>\$100</b>
<b>\$10,000</b>	<b>\$25,000</b>	<b>\$200</b>
<b>\$25,000</b>	<b>\$50,000</b>	<b>\$250</b>
<b>\$50,000</b>	<b>\$100,000</b>	<b>\$500</b>
<b>\$100,000</b>	<b>\$500,000</b>	<b>\$1,000</b>

**Article 5- Contract Price and Job Order Price**

**5.1 Contract Price.**

This Agreement will have a maximum amount of **\$2,000,000.**

- 5.1.1** If the City opts to extend this Agreement pursuant to Division 4.1.1, the Contract Amendment will increase the maximum amount, if necessary.

**5.2 Job Order Price**

- 5.2.1.** Each Job Order price is subject to adjustments made in accordance with Article 6.
- 5.2.2** The Job Order Price shall be calculated utilizing an agreed upon Cost- coefficient of 1.0 and the Unit Prices.
- 5.2.2.1** Unless otherwise provided in the Contract Documents, each Job Order Price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

- 5.2.2.2** The JOC Contractor guarantees to bring each Job Order within the Job Order Price or JOC Contractor alone will be required to pay the difference between the actual cost and the Job Order Price.
- 5.2.2.3** The Unit Prices and the Cost-coefficient are subject to adjustment by Contract Amendment in accordance to Article 6
- 5.2.3** The scope of work will vary with each Job Order. At the beginning of each Job Order, a scope conference will be scheduled to define design and construction services required of the JOC Contractor. The Job Order Amendment and related documents will be given to the JOC Contractor.
- 5.2.3.1** The JOC Contractor will be asked to provide a proposal with the Job Order Price and a schedule indicating the Duration of the Work for the proposed Job Order based on the scope meeting and the provided documents.
- 5.2.3.2** The Job Order Price shall be calculated using the Unit Prices as shown at Appendix A, a cost for any Special Items and the Cost-coefficient.
- 5.3** If the JOC Contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job order construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard tasks in the job order. All subcontracted work shall comply with the ARS most recent requirements.
- 5.3.1** The JOC Contractor shall deliver promptly to each Subcontractor invited to bid a coefficient to the JOC Contractor to do all or part of the work under one or more job orders:
- 5.3.1.2** A copy of the descriptions of all standard individual tasks on which the Subcontractor is invited to bid.
- 5.3.1.3** A copy of the standard unit prices for the individual tasks on which the Subcontractor is invited to bid.
- 5.3.2** If not previously delivered to the Subcontractor, the JOC Contractor shall deliver promptly the following to each Subcontractor invited to or that has agreed to do any of the work included in any job order:
- 5.3.2.1** A copy of the description of each standard individual task that is included in the job order and that the Subcontractor is invited to perform.
- 5.3.2.2** The number of units of each standard individual task that is included in the job order and that the Subcontractor is invited to perform.

- 5.3.2.3** The standard unit price for each standard individual task that is included in the job order and that the Subcontractor is invited to perform.

## **Article 6 – Changes to Job Order Price and Time**

### **6.1 Delays to the Contract Services**

- 6.1.1** If JOC Contractor is delayed in the performance of the Contract Services due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom JOC Contractor is responsible, the Job Order Times for performance shall be reasonably extended by Change Order.
- 6.1.2** The JOC Contractor shall request an increase in the Job Order Time by written notice including an estimate of probable effect of delay on progress of the Contract Services.
- 6.1.2.1** In the case of a continuing delay only one request is necessary. However, the City reserves the right to request, and the JOC shall provide, updates on the anticipated impact of the delay and changes in the cause or severity of the reason for the delay. The JOC shall provide the updates within three working days of the City request. Failure to provide the update shall result in a lost of delay claim time to the extent the update is received late.
- 6.1.2.2** Written notice shall be received within five (5) Days of the commencement of the cause of the delay.
- 6.1.2.3** When a written notice is received more than five (5) days after commencement of the cause of the delay, the period of delay shall be deemed to commence thirty (30) days prior to the giving of such notice.
- 6.1.3** By way of example, events that may entitle the JOC Contractor to an extension of the Job Order Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.4** If adverse weather conditions are the basis for a request for additional Job Order Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Also, the JOC Contractor shall demonstrate that they took appropriate action to avoid or minimize the impact of the adverse weather.
- 6.1.5** It is understood, however, that permitting the JOC Contractor to proceed to complete any services, or any part of them, after the date to which the time of

completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

- 6.1.6** In addition to JOC Contractor's right to a time extension for those events set forth in this Division 6.1, JOC Contractor shall also be entitled to an appropriate adjustment of the Job Order Price provided, however, that the Job Order Price shall not be adjusted for those events set forth in this Division 6.1 that are beyond the control of both JOC Contractor and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.7** If JOC Contractor is delayed in the performance of the Contract Services due to a delay for which the City is responsible, that is unreasonable under the circumstances and that was not within the contemplation of the parties to the contract, negotiations between the City and the JOC Contractor for the recovery of damages related to expenses incurred by the JOC Contractor may be initiated. This section shall not be construed to void any provision in the contract that requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.

## **6.2 Differing Site Conditions**

- 6.2.1** If JOC Contractor encounters a Differing Site Condition, JOC Contractor will be entitled to an adjustment in the Job Order Price and/or Job Order Times to the extent JOC Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition. The City shall also be entitled to an adjustment due to Differing Site Conditions to one-half the beneficial impact of the Condition on the work
- 6.2.2** Upon encountering a Differing Site Condition, JOC Contractor shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. JOC Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **6.3 Errors, Discrepancies and Omissions.**

- 6.3.1** If the JOC Contractor observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the City and request clarification.
- 6.3.2** If the JOC Contractor proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the JOC Contractor prior to clarification by the City shall be at the JOC Contractor's risk.

## **6.4 City Requested Change in Job Order.**



The City reserves the right to make, at any time during the progress of a Job Order, such alterations as may be found necessary or desirable.

**6.4.1** Such alterations and changes shall not invalidate this Agreement or the Job Order Amendment nor release the surety and the JOC Contractor agrees to perform the Job Order as altered, the same as if it has been a part of the original Contract Documents.

**6.4.2** The City will request a proposal for a change in a Job Order from JOC Contractor, and an adjustment in the Job Order Price and/or Job Order Times shall be made based on the Unit Prices, Cost-coefficient and time.

**6.5 Legal Requirements.**

The Job Order Price and/or Job Order Times shall be adjusted to compensate JOC Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Job Order Amendment affecting the performance of the Work. Such effects may include, without limitation, revisions required to be made to the Construction Documents because of changes in Legal Requirements.

**6.6 Change Orders.**

**6.6.1** City and JOC Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

**6.6.2** All changes to a Job Order authorized by Change Orders shall be performed under the conditions of the Contract Documents.

**6.7 Minor Changes in a Job Order**

**6.7.1** The City has authority to order minor changes to a Job Order that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be effected by written order and shall be binding on the City and JOC Contractor. The JOC Contractor shall carry out such written orders promptly.

**6.7.2** JOC Contractor may make minor changes to a Job Order, provided, however that JOC Contractor shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by JOC Contractor

**6.7.3** Minor changes to a Job Order will not involve an adjustment in the Job Order Price and/or Job Order Times

**6.8 Job Order Price Adjustments**

- 6.8.1** The increase or decrease in Job Order Price resulting from a change in the Work shall be determined by the Unit prices set forth in Exhibit A and the Cost-coefficient.
- 6.8.2** If application of such Unit Prices will cause substantial inequity to City or JOC Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.3** If City and JOC Contractor disagree upon whether JOC Contractor is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of a Job Order or proposed changes to a Job Order, City and JOC Contractor shall resolve the disagreement pursuant to Article 8 hereof.
  - 6.8.3.1** As part of the negotiation process, JOC Contractor shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
  - 6.8.3.2** If the parties are unable to agree and City expects JOC Contractor to perform the services in accordance with City's interpretations, JOC Contractor shall proceed to perform the disputed services, conditioned upon City issuing a written order to JOC Contractor (i) directing JOC Contractor to proceed and (ii) specifying City's interpretation of the services that are to be performed.

## **6.9 Changes to Unit Prices and Cost- coefficient**

- 6.9.1** If a work item needs to be added to the Unit Prices shown in exhibit A, the city will determine the new Unit Price utilizing the same method used to determine the original Unit Prices.
- 6.9.2** If this Agreement is extended pursuant to Divisions 4.1 and 5.1, the Unit Prices may be changed based on inflationary, deflationary and market changes at the time of the extension.
  - 6.9.2.1** The Unit Prices will be evaluated by the City utilizing the same method used to determine the original unit pricing.
  - 6.9.2.2** Unit Prices affected by the price of bituminous material and diesel fuel will be adjusted based on the Arizona State Department of Transportation price adjustment formula for bituminous material and diesel fuel.
  - 6.9.2.3** The JOC Contractor may provide documentation demonstrating market changes to be considered by the City.
- 6.9.3** If this Agreement is extended pursuant to Divisions 4.1 and 5.1, the Cost-coefficient may be adjusted at the time of the extension.

- 6.9.3.1** The Cost-Coefficient will be adjusted for documented changes in taxes, bonding and insurance.
- 6.9.3.2** Adjustment for changes in the JOC Contractor's operating costs may be negotiated.
- 6.9.4** During the Contract Time between extension dates the JOC Contractor may request in writing to the City Engineer a JOC Amendment to adjust a Unit Price or the Cost-coefficient.
- 6.9.5** Unit Price adjustments will be allowed at the extension of the contract, except as other wise specifically stated.
- 6.10** **Emergencies.** In any emergency affecting the safety of persons and/or property, JOC Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price and/or Job Order Time(s) resulting from emergency work under this Section 6.10 shall be determined as provided in this Article 6.

## **Article 7- Procedure for Payment**

### **7.1 Job Order Payment Request**

- 7.1.1** At least five (5) working days prior to the date established for a progress payment, the JOC Contractor shall meet with the City's Representative to review the progress of the Work, as it will be reflected on the Job Order Payment Request.
- 7.1.2** The Job Order Payment Request shall constitute JOC Contractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Job Order Payment Request, and that all Work for which payment is requested has been incorporated into the project and is clear of all claims, liens, encumbrances and security interests. The City reserves the right to request written documents verifying the clear status of any work for which payment is requested.

### **7.2 Partial Payments**

- 7.2.1** Partial payment will be made for Job Orders with Duration of the Work greater than 90 Days and may be made if Duration of the Work is less than 90 Days.
- 7.2.2** JOC Contractor shall submit a Job Order Payment Request to the City once each calendar month, but not more than once in a 30-day period, beginning with the first month after the Job Order Notice to Proceed. The first payment request shall not be made prior to 15 days after starting the work.

**7.2.3** The Job Order Payment Request may request payment only for equipment and materials incorporated into the Project.

**7.2.3.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

**7.2.3.2** For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Yavapai County or Coconino County and be accessible for City's inspection. Title to such materials and equipment shall include applicable insurance, bonding, storage and transportation to the Site.

**7.2.3.3** All bonds and insurance required for stored materials shall be in the City's name.

### **7.3 Payment of Job Order Price**

**7.3.1** Invoice Processing: The City will not accept inaccurate, illegible, or incomplete invoices (requests for payments). Invoices shall be hard copy, with original signature. Electronic or facsimile signatures are not acceptable on the invoice.

**7.3.1.1** The City distributes payments on every other Friday, beginning on **X/XX/XX**, unless holidays dictate otherwise. Invoices must be processed to the Finance Department not later than 4:30 P.M. three days prior to the distribution day. The Public Works Department requires three workdays to process a correct, accurate, and otherwise acceptable invoice.

**7.3.1.2** The City's Project Engineer must receive an acceptable, correct invoice with required supporting documentation not later than close of business on the Wednesday, nine calendar days prior to the expected check distribution day.

**7.3.1.3** For projects longer than 60 calendar days duration, each request for payment shall be accompanied by a progress schedule, effective through the invoice period. The City shall not release a payment until the contractor provides an acceptable, accurate, and updated project schedule.

**7.3.2** City shall pay JOC Contractor all amounts properly due. If City determines that JOC Contractor is not entitled to all or part of a JOC Contractor Payment Request, it will notify JOC Contractor in writing within (7) days after the date JOC Contractor Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures JOC Contractor must take to rectify City's concerns. JOC Contractor and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, JOC Contractor may pursue its rights under the Contract Documents, including those under Article 8 hereof.

#### **7.4 Retention on Job Order Payments**

Pursuant to Arizona Revised Statutes Title 34-609.B: There is a 10% retention for job-order-contracting construction services until 50% of the job is complete, then one-half of the retained amount is to be paid. Future retentions are limited to 5%.

#### **7.5 Final Payment**

**7.5.1** After receipt of a final JOC Contractor Payment Request, City shall make final payment including retention as prescribed in this Article, provided that JOC Contractor has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

**7.5.2** At the time of submission of its final JOC Contractor Payment Request for each job order, JOC Contractor shall provide the following information:

**7.5.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests; and

**7.5.2.2** A general release executed by JOC Contractor waiving, upon receipt of final payment by JOC Contractor, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;

#### **7.6 Payments To Subcontractors or Supplier**

**7.6.1** JOC Contractor shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. The JOC Contractor shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. No Contract between JOC Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided herein.

**7.6.2** If the JOC Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and JOC Contractor agrees that the City may take such actions:

**7.6.2.1** to hold the JOC Contractor in default under this Agreement;

**7.6.2.2** withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

**7.6.2.3** reject all future offers to perform work for the City from the JOC Contractor for a period not to exceed one year from Substantial Completion date of this Project; or

**7.6.2.4** terminate this agreement.

**7.6.3** If JOC Contractor's payment to a Subcontractor or supplier is in dispute, JOC Contractor and Subcontractor or supplier agree to submit the dispute to any of one of the following dispute resolution processes within fourteen (14) calendar days from the date any party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreeable to all parties or (c) a City of Sedona facilitated mediation. When a disputed claim is resolved through ADR or otherwise, the JOC Contractor and Subcontractor or supplier agree to implement the resolution within seven (7) calendar days from the resolution date.

**7.6.4** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

**7.6.5** JOC Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

## **7.7 Record Keeping and Finance Controls**

**7.7.1** Records of the JOC Contractor's direct personnel payroll, reimbursable expenses pertaining to each Job Order and records of accounts between the City and JOC Contractor shall be kept on a generally recognized accounting basis and shall be available for three years after completion of the Project. The City reserves the right to review and comment upon the adequacy of the account records.

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

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

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

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

## **Article 8- Claims and Disputes**

### **8.1 Requests for Contract Adjustments and Relief.**

**8.1.1** If either JOC Contractor or City believes that it is entitled to relief against the other for any event arising out of or related to Contract Services, such party shall provide written notice to the other party of the basis for its claim for relief.

**8.1.2** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

**8.1.3** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

**8.1.4** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The amount of claim compensation cannot include compensation for factors occurring more than 21 days before the claim.

### **8.2 Dispute Avoidance and Resolution**

**8.2.1** The parties are committed to working with each other throughout the Project. If disputes or disagreements do arise, JOC Contractor and City shall in good faith work to resolve such disputes or disagreements in conformance with the procedures specified in this contract.

**8.2.2** JOC Contractor and City will first attempt to resolve disputes or disagreements at the field level through discussions between JOC Contractor's Representative and City's Representative.

**8.2.3** If a dispute or disagreement cannot be resolved through JOC Contractor's Representative and City's Representative within fifteen (15) days from the date any party gives notice to the other, JOC Contractor's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon

as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement.

**8.3 Duty to Continue Performance** Unless provided to the contrary in the Contract Documents, JOC Contractor shall continue to perform the Work and City shall continue to satisfy its payment obligations which are not in dispute to JOC Contractor, pending the final resolution of any dispute or disagreement between JOC Contractor and City.

**8.4 Representatives of the Parties**

**8.4.1 City's Representatives**

**8.4.1.1** City designates the individual listed below as the City's Senior Representative, which individual has the authority and responsibility for resolving disputes under Division 8.2.3:

Mr. Charles Mosley, PE, City Engineer  
102 Roadrunner Drive  
Sedona, AZ 86336, 928-204-7132.

**8.4.1.2** The City designates the individual listed below as the City's Representative who will manage the Job Order.

Mr. Dan Neimy  
City Maintenance Superintendent  
102 Roadrunner Drive  
Sedona, AZ 86336, Phone: 928-204-7109 Fax: 928-282-5348

**8.4.2 JOC Contractor's Representatives**

**8.4.2.1** JOC Contractor designates the individual listed below as the JOC Contractor's Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.2.3:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

**8.4.2.2** JOC Contractor will designate an individual for each Job Order as the JOC Contractor's Representative.

**Article 9 – Suspension and Termination**



## **9.1 City's Right to Stop Contract Services**

**9.1.1** City may, at its discretion and without cause, order JOC Contractor in writing to suspend the Work on a Job Order. The JOC Contractor is responsible for site security and protection during a suspension unless otherwise stated in writing by the City. Payment for such work during suspension shall be subject to the compensation provisions of this contract.

**9.1.2** JOC Contractor may seek an adjustment of the Job Order Price and/or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of Work by the City.

## **9.2 Termination for Convenience**

**9.2.1** Upon receipt of written notice to JOC Contractor, City may, at its discretion and without cause, elect to terminate this Agreement or any Job Order.

**9.2.2** If the City suspends the Work on any Job Order for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

**9.2.3** Upon receipt of written notice of termination of this Agreement or any Job Order, the JOC Contractor shall proceed with the following obligations.

**9.2.3.1** Stop Work as specified in the notice.

**9.2.3.2** Place no further subcontracts or orders.

**9.2.3.3** Terminate all subcontracts to the extent they relate to the work terminated.

**9.2.3.4** Assign to the City all right, title and interest of the JOC Contractor under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

**9.2.3.5** Take any action that may be necessary for the protection and preservation of the property related to the Job Order or Orders that is in the possession of the JOC Contractor and in which the City has or may acquire an interest.

**9.2.4** The JOC Contractor shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.

**9.2.5** The City shall pay JOC Contractor the following:

**9.2.5.1** The direct value of its completed Work and materials supplied as of the date of termination not to exceed the total value of the Job Order, unless approved by change order.

**9.2.5.2** The reasonable costs and expenses attributable to such termination.

**9.2.5.3** JOC Contractor shall be entitled to profit and overhead on completed Work only and shall not be entitled to anticipated profit or anticipated overhead for uncompleted Work. If it appears the JOC Contractor would have sustained a loss on the entire Contract Services had they been completed, the JOC Contractor shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

**9.2.6** The JOC Contractor shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Division 7.7.

### **9.3 City's Right to Perform and Terminate for Cause**

**9.3.1** If the City provides the JOC Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the JOC Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at the JOC Contractor's expense.

**9.3.2** If JOC Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Contract Services with promptness and diligence to ensure that a Job Order is completed by the Job Order Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Divisions 9.3.3 and 9.3.4 below.

**9.3.3** Upon the occurrence of an event set forth in Division 9.3.2 above, City may provide written notice to JOC Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days or other longer period, not to exceed ninety (90) days at the sole discretion of the City as specified in the notice, of JOC Contractor's receipt of such notice.

**9.3.3.1** If JOC Contractor fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to JOC Contractor of its intent to terminate within an additional seven (7) days or other longer period, not to exceed ninety (90) days at the sole discretion of the City as specified in the notice, of JOC Contractor's receipt of such notice.

**9.3.3.2** If JOC Contractor, within the second period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement

terminated for default by providing written notice to JOC Contractor of such declaration.

- 9.3.4** Upon declaring the Agreement terminated pursuant to Subdivision 9.3.3.2 above, City may for all Job Orders enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which JOC Contractor hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.3.5** In the event of such termination, JOC Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work on all Job Orders shall be finally completed in accordance with the Contract Documents. At such time, the JOC Contractor will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.3.6** If City's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price or Job Order Prices, then JOC Contractor shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from JOC Contractor's default.
- 9.3.7** If City terminates this Agreement for cause and the termination is determined to have been without legal right, the termination for cause shall be deemed to have been a termination for convenience in accordance with the provisions of Division 9.2.

## **Article 10 - Insurance and Bonds**

### **10.1 Insurance Requirements**

- 10.1.1** Concurrently with the execution of this Agreement, the JOC Contractor shall furnish the City of Sedona a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the state of Arizona. The City shall be named as additional insured on liability policies
- 10.1.2** JOC Contractor, Subcontractors and Subconsultants shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the JOC Contractor, his agents, representatives, employees, or Subcontractors.

**10.1.3** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The limits on the insurance renew upon each extension of the contract, and shall not be cumulative over the life of the contract.

**10.1.4** The City in no way warrants that the minimum limits contained herein are sufficient to protect the JOC Contractor from liabilities that might arise out of the performance of the Contract Services under this Agreement by the JOC Contractor, his agents, representatives, employees, Subcontractors or Subconsultants and JOC Contractor is free to purchase such additional insurance as may be determined necessary.

**10.2** Minimum Scope And Limits Of Insurance. JOC Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

**10.2.1** Commercial General Liability-Occurrence Form (Each Occurrence)

(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$50,000

**10.2.2** Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles (Each Occurrence)

(Form CA 0001, Ed 12/93 or any replacement thereof)

Combined Single Limit Per Accident	\$1,000,000
For Bodily Injury and Property Damage	

**10.2.3** Workers Compensation and Employers Liability (Each Occurrence)

Workers Compensation Statutory

Employers Liability: Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

**10.2.4** Builders' Risk Insurance (Course of Construction)

To be provided in the amount of 100% of the annual total or the annual total on the JOC.

**10.3 Self-Insured Retentions**

The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City

of Sedona. JOC Contractor shall be solely responsible for any such deductible or self-insured retention amount. City of Sedona, at its option, may require JOC Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

#### **10.4 Other Insurance Requirements**

The policies are to contain, or be endorsed to contain, the following provisions:

##### **10.4.1 Commercial General Liability and Automobile Liability Coverages**

**10.4.1.1** The City of Sedona, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the JOC Contractor including the City's general supervision of the JOC Contractor; products and completed operations of the JOC Contractor; and automobiles owned, leased, hired, or borrowed by the JOC Contractor.

**10.4.1.2** The JOC Contractor 's insurance shall contain broad form contractual liability coverage and shall not exclude liability arising out of explosion, collapse, or underground property damage hazards (XCU) coverage.

**10.4.1.3** The City, its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by the JOC Contractor even if those limits of liability are in excess of those required by this Agreement. The commercial general liability additional insured endorsement will be at least as broad as the Insurance Services Office, Inc.'s (ISO) additional insured, form B CG 20 10 11 85.

**10.4.1.4** The JOC Contractor 's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the JOC Contractor and shall not contribute to it.

**10.4.1.5** The JOC Contractor 's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**10.4.1.6** Coverage provided by the JOC Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**10.4.1.7** All policies, except Professional Liability, shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from work performed by the JOC Contractor for the City.

**10.4.2** Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the JOC Contractor for the City.

**10.4.3** Builders Risk Insurance (Course of Construction): required if subject contract involves any construction of buildings, building improvements, and civil works construction (storm drain, pipes, culverts and similar facilities) in whole or part. In addition, JOC Contractor bears all responsibility for loss to all work being performed or under construction.

**10.4.3.1** Builders Risk Insurance shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Sedona, has an insurable interest in the property required to be covered.

**10.4.3.2** The builders' risk insurance shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

**10.4.3.3** This insurance shall include as named insureds, the City of Sedona, the JOC Contractor, Subcontractors, Subconsultants and/or others with an insurable interest in the work.

**10.4.3.4** This insurance shall be written on a Special Causes of Loss basis (minimally including the perils of fire, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), replacement cost basis and shall include coverage for flood and earthquake.

**10.4.3.5** All rights of subrogation are hereby waived against the City of Sedona, its officers, officials, agents and employees.

**10.4.3.6** Builders' Risk Insurance must provide coverage from the time any covered property becomes the JOC Contractor's responsibility, and continuing without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off site.

**10.4.3.7** JOC Contractor is responsible for payment of all deductibles under the builder's risk policy.

## **10.5 Sub-consultant's and Subcontractor's Insurance**

JOC Contractors' certificates shall include all subcontractors as insureds under its policies or JOC Contractor shall furnish obtain separate certificates and

endorsements for each subcontractor. All coverages for subcontractors shall be sufficient to cover all of its work performed herein.

## **10.6 Notice Of Cancellation**

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to:

**City of Sedona Public Works Department  
City Maintenance Superintendent  
102 Roadrunner Drive  
Sedona, Arizona 86336**

## **10.7 Acceptability Of Insurers**

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the JOC Contractor from potential insurer insolvency.

## **10.8 Verification of Coverage**

**10.8.1** JOC Contractor shall furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.

**10.8.2** All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builder's Risk Insurance, which will be received and approved as provided in Division 10.2.4. Each insurance policy required by this Agreement must be in effect at or prior to the earlier of commencement of Contract Services under the Contract Documents or the signing of this Agreement except for Builder's Risk Insurance which must be in effect prior to commencement to Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

**10.8.3** All certificates of insurance required by this Agreement shall be sent directly to the City of Sedona, City Maintenance Superintendent. The project number and project description shall be included on the Certificates of Insurance. The City

reserves the right to require complete, certified copies of all insurance policies required by this Agreement, at any time.

## **10.8 Approval**

Any modification or variation from the insurance requirements in this Agreement shall be approved by the City of Sedona City Attorney, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

## **10.10 Bonds and Other Performance Security.**

**10.10.1** Prior to execution of each individual Job Order agreement, the contractor must provide a performance bond and a payment bond for all construction services, each in an amount equal to the full amount of the agreed upon cost for that Job Order.

**10.10.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.

**10.10.3** The bonds shall be made payable and acceptable to the City of Sedona.

**10.10.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

**10.10.4.1** If one Power of Attorney is submitted, it shall be for twice the total Job Order Price.

**10.10.4.2** If two Powers of Attorney are submitted, each shall be for the total Job Order Price. Personal or individual bonds are not acceptable.

**10.10.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the JOC Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**10.10.6** All bonds submitted for this project shall be provided by a company which has been rated no less than B++6 by the A.M. Best Company.

## **Article 11 - Indemnification**



## **11.1 JOC Contractor's General Indemnification**

To the fullest extent permitted by law, JOC Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Sedona, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by JOC Contractor relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

## **11.2 Insurance Provisions Separate**

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## **11.3 Intellectual Property**

The JOC Contractor shall pay all royalties and license fees associated with its performance of services herewith. The JOC Contractor shall defend suits or claims for infringement of patent rights and shall hold the City harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the JOC Contractor has reason to believe that the required design, process or product is an infringement of a patent, the JOC Contractor shall be responsible for such loss unless such information is promptly furnished to the Design Professional.

## **Article 12 – General Provisions**

### **12.1 Interpretation and Intent**

**12.1.1** The Contract Documents are intended to permit the parties to complete the Contract Services and all obligations required by the Contract Documents within the Job Order Times for the Job Order Prices. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

**12.1.2** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1. Drawings take precedence over Specifications and on the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.

**12.1.3** The Contract Documents form the entire agreement between City and JOC Contractor and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **12.2 Amendments**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.3 Time is of the Essence**

City and JOC Contractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

## **12.4 Mutual Obligations**

City and JOC Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

## **12.5 Cooperation And Further Documentation**

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

### **12.5.1 Assignment**

Neither JOC Contractor nor City shall, without the written consent of the other, assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

## **12.6 Force Majeure**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts

of God, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

## **12.7 Construction Methods**

If the City provides the JOC Contractor with a written order to provide adequate maintenance of traffic (pedestrian and vehicular), clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the JOC Contractor fails to comply in the time frame specified, the City may have work accomplished by other sources at the JOC Contractor's expense.

## **12.8 Utility Relocations for Construction Methods**

If any utility is relocated or rebuilt to accommodate the JOC Contractor's construction methods and available equipment, the total cost of the work shall be borne by the JOC Contractor.

## **12.9 Damaged Utilities during Construction**

Any utilities damaged during construction shall be replaced at the JOC Contractor's expense as per the requirements of the M.A.G. Standard Specifications and the affected utility.

## **12.10 Successorship**

JOC Contractor and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns. City does reserve the right to terminate the contract upon reassignment without penalty.

## **12.11 Conflict In Language**

All services performed shall conform to all applicable City of Sedona codes, ordinances and requirements as outlined in the Contract Documents. If there is a conflict in interpretation between provisions in this Agreement and those in exhibits, the provisions in this Agreement shall prevail.

## **12.12 Third Party Beneficiary**

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the JOC Contractor, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the JOC Contractor and not for the benefit of any other party.

## **12.13 Governing Law**

The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Yavapai County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

#### **12.14 Severability**

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

#### **12.15 Legal Requirements**

JOC Contractor shall perform all Contract Services in accordance with all Legal Requirements and shall provide all notices applicable to the Contract Services as required by the Legal Requirements.

#### **12.16 Independent Contractor**

The JOC Contractor is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the JOC Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the JOC Contractor shall follow the wishes of the City as to the results of the work only. These results shall comply with all applicable laws and ordinances.

#### **12.17 City's Right Of Cancellation**

All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Sedona pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

#### **12.18 Survival**

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

#### **12.19 Covenant Against Contingent Fees**

The JOC Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Sedona has any interest, financially,

or otherwise, in the firm. For breach or violation of this warrant, the City of Sedona shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**12.20 No Waiver**

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

**12.21 Headings**

The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**12.22 Notice**

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) three ( 3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid to the address indicated below or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

To City:	Mr. Charles Mosley, PE, City Engineer City of Sedona 102 Roadrunner Drive Sedona, Arizona 86336
To JOC Contractor:	

**12.23 Equal Employment Opportunity**

During the performance of this contract the JOC Contractor will follow the Federal government’s Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

**12.24 Hazardous Materials**

Upon discovery of hazardous materials the JOC Order Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

#### **12.25 Traffic Control**

- a. Complete street closures will not be permitted unless specified in the Special Provisions. The timing and sequence of street closures shall be approved by the City Maintenance Superintendent or designee at least 30 days prior to the closure. This approval is necessary to provide coordination with other roadway projects and special events. Restrictions of parking, revision of speed limits, and road closures anticipated for the work shall be clearly disclosed in the Job Order Amendment, and shall be considered not necessary if not mentioned.
- b. Adequate barricades and lighted warning signs shall be installed and maintained by the Job Order Contractor throughout the duration of the project. All traffic control shall be in accordance with the M.U.T.C.D. or as per the approved barricade plan unless otherwise specified in the Special Provisions.
- c. The JOC Contractor shall submit a construction schedule and a traffic control plan to the City Maintenance Superintendent (or designee) for approval and/or modification at least three (3) working days before construction is initiated. For purpose of this requirement, working days are Monday through Friday, excluding City recognized holidays.
- d. JOC Contractor will comply with all provisions of the M.U.T.C.D. and any other traffic control provisions as may be provided in the technical specifications or in the approved barricade plan.

#### **12.26 Material Source**

No material source has been designated by the City for use on this project.

#### **12.27 Native Plants**

The JOC Contractor shall take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Sedona's Land Development Code, Native Plants, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.

### **12.28 Endangered Hardwoods**

Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions shall not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration. The Director shall only grant an exemption if the use of endangered tropical hardwood is deemed necessary for historical restoration or to repair existing facilities and the use of any substitute material is not practical. Any lease-purchase agreement entered into by this state or its political subdivisions for construction shall specify that no endangered tropical hardwood may be used in the construction unless an exemption is granted by the Director. As used in this subsection, "endangered tropical hardwood" includes ebony, lauan, mahogany or teak hardwood.

### **12.29 Responsibility for Privilege (Sales) Taxes**

The contractor shall be responsible for all State of Arizona and City of Sedona transaction privilege (sales) taxes due on construction income, whether or not such taxes are specifically separated in the bid amount.

### **12.30 Loss and Damages**

All loss or damage arising out of the nature of the work to be done or from the action of the elements, or from any unforeseen circumstances, in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in and/or during the prosecution of the work, or from any casualty whatsoever of every description, shall be sustained and borne by the Contractor at his own cost and expense.

### **12.31 Rights-of-Way**

The M.A.G. Standard Specification 107.12 shall hereby be modified to read as follows: The Contractor, at his own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements and/or rights of way secured by the City as indicated upon the plans.

### **12.32 Existing Traffic and Street Signs and Traffic Signal Equipment**

The Contractor shall use due care when excavating at or near intersections where traffic signal underground conduit is located. The Contractor shall notify the City Maintenance Superintendent (928-204-7109) 48 hours in advance of any work at such intersections. The Contractor shall be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the City Maintenance Superintendent when underground conduit is to be severed by excavations at the intersection. The City Maintenance Superintendent shall have

all underground traffic conduit located and shall provide the necessary City Technicians to assist the Contractor in identifying wiring phases and direction of conduit runs upon 24 hours notice from the Contractor and at least one day prior to the Contractor's scheduled wiring and installation of temporary cables. The Contractor shall be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The City Maintenance Superintendent shall provide a City technician to assist the Contractor with connecting field wiring within the traffic signal control cabinet. The Contractor shall provide, at his expense an off-duty uniformed Police Officer to direct traffic while the traffic signal is turned off and the wiring is transferred. The Contractor shall be responsible as specified by the City Maintenance Superintendent for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. The City does not permit the splicing of Magnetic Detector Loops.

### **12.33 Conflict of Interest**

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract with respect to the subject matter of the contract.



**CITY OF SEDONA, ARIZONA**

**PAVING JOC  
CONTRACT NO. 2010-789-COS**

**AGREEMENT**

IN WITNESS WHEREOF, three (3) identical counterparts of this contract each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The JOC Contractor agrees that this Contract, as awarded, is for the stated work and understands that payment for the work will be made on the basis of the indicated amount, per the terms and conditions of this contract.

CITY OF SEDONA, ARIZONA,

JOC CONTRACTOR

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

(SEAL)  
ATTEST:

(SEAL)  
ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

EXHIBIT A – UNIT PRICE  
To be attached