



**Town of Queen Creek, Arizona  
Transportation Department**

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**JOB ORDER CONTRACT  
PAVEMENT IMPROVEMENTS  
“EXHIBIT A”**

**CONTRACT NO. [REDACTED]**

**CONTRACTOR NAME**

**MAYOR**

**ART SANDERS**

**TOWN COUNCIL**

**Vice Mayor – Gail Barney**

**Council Member – Lisa Coletto-Cohen**

**Council Member – Gordon Mortensen**

**Council Member – Toni Valenzuela**

**Council Member – Joyce Hildebrandt**

**Council Member – Jon Wootten**

**TOWN MANAGEMENT**

**Town Manager – John Kross**

**Transportation Director – Dick Schaner**

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### Attachments:

- Request for Qualifications
- Statement of Qualifications
- Request for Technical Proposals
- Technical Proposals

**TOWN OF QUEEN CREEK, ARIZONA  
TRANSPORTATION DEPARTMENT**

**JOB ORDER CONTRACT – PAVEMENT IMPROVEMENTS**

**CONTRACT NO. [REDACTED]**

**THIS AGREEMENT**, made and entered by and between the Town of Queen Creek, an Arizona municipal corporation, hereinafter designated the “Town” and **Contractor Name** a licensed Arizona corporation, hereinafter designated the “JOC CONTRACTOR”

**RECITALS**

- A.** The Town Manager of Queen Creek, Arizona, is authorized and empowered by provisions of the Town Code to execute contracts for construction services and professional services.
- B.** The Town intends to contract to construct a number of Projects which will be constructed as Job Orders.
- C.** The JOC Contractor has represented to the Town the ability to provide or procure construction and design services and based on this representation the Town engages **Contractor Name** these services.

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

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**SECTION 1 - Definitions**

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**“Agreement”** or **“Job Order Contract”** or **“JOC”** means this fully executed agreement between Town and JOC Contractor.

**“Town”** means the Town of Queen Creek or its representative. Permitting activities handled by the Town of Queen Creek Developmental Services, Fire and Planning Departments are not subject to the responsibilities of the Town under this Agreement.

**“Town’s Representative”** means the person described in Section 8.4.

**“Town’s Senior Representative”** means the person described in Section 8.4.

**“Construction Documents”** means the plans, specifications and drawings prepared by a Design Professional after correcting for permit review requirements.

**“Construction Fee”** means the Job Order Contractor’s administrative costs, home office overhead, and profit.

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

**“Contract Documents”** means the following items and documents in descending order of precedence executed by the Town and the JOC Contractor: (i) current version of the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details; (ii) all written modifications and Job Order Adjustments; (iii) Job Order Agreements (iv) Contract Amendments; (v) this Agreement, including all exhibits and attachments; (vi) JOC Contractor’s Proposal (if any); (vii) JOC Contractor Statement of Qualifications.

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

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

**“Contract Times”** means the time set forth in Section 4 subject to Contract Amendment(s) in accordance with this Agreement.

**“Cost of Work”** means the direct costs necessarily incurred by the Job Order Contractor in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the Job Order Contractor’s Construction Fee, General Conditions Costs, and taxes.

**“Day(s)”** mean 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 in the Job Order Agreement or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

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

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

**“General Condition Costs”** includes, but is not limited to the following types of costs for the Job Order Contractor during the construction phase: (i) payroll cost for project manager or Job Order Contractor for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the Job Order Contractor or Subcontractors.

**“JOC Contractor”** means **Contractor Name** selected by the Town to provide or procure construction and design services as detailed in this Job Order Contract.

**“JOC Contractor’s Representative”** means the person described in Section 8.4.

**"JOC Contractor's Senior Representative"** means the person described in Section 8.4

**"Job Order"** or **"Project"** means a specific scope of Contract Services done pursuant to a Job Order Agreement.

**"Job Order Adjustment"** means a written instrument issued after execution of a Job Order Agreement signed by Town 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.

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

**"Job Order Price"** means the sum of the maximum cost of the Work for a Job Order; the JOC Contractor's construction fee; general conditions fee; taxes, bonds, insurances costs; and contingency as proposed and approved pursuant to Section 5.1. The approved Job Order Price will be made part of this Agreement by executing a Job Order Agreement.

**"JOC Payment Request"** means the Town form used by the JOC Contractor to request progress payments for Job Orders in accordance with Section 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 Agreement.

**"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.

**"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.

**"Record Documents"** means the documents created pursuant to Section 2.10.

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

**"Shop Drawings"** mean 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.

**"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 Town can occupy and/or use the Project or a portion thereof for its intended purposes.

**“Unit Price Book (UPB)”** means the Town of Queen Creek price book created for this contract and attached as “Exhibit A”.

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

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

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### **2.1 General Services**

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

**2.1.2** The Work shall be performed in a good, workmanlike and substantial manner and to the satisfaction of the Town’s Representative as described in Section 8.4 and under the direction and supervision of the Town’s Transportation Director, or his properly authorized agents with the care and skill of a qualified contractor in Arizona.

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

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

**2.1.3.2** All documents prepared by the Design Professional are subject to review by the Town. Review by the Town does not relieve any Design Professional from the professional liability associated with the documents it has prepared.

**2.1.4** JOC Contractor’s Representative shall be reasonably available to Town 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 Town and shall be vested with the authority to act on behalf of JOC Contractor.

**2.1.5** It is not required that the services detailed in this Agreement be performed in the sequence in which they are described and the services may pertain to all phases of the Contract Services.

### **2.2 Subcontractor Selection Plan**

**2.2.1** The selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

**2.2.2** The approved subcontractor selection plan must be adhered to for the duration of the contract. Deviation from or changes to the approved plan must be submitted to and approved by the Town.

## **2.3 Government Approvals and Permits**

- 2.3.1** Unless otherwise provided, JOC Contractor shall obtain or assist the Town to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The JOC Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**
- 2.3.2** Copies of these permits and notices must be provided to the Town's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the Town's Representative. This provision does not constitute an assumption by the Town of an obligation of any kind for violation of said permit or notice requirements.
- 2.3.3** Town shall be responsible for Town of Queen Creek review and permit(s) fees for building and demolition permits. Town will also pay review fees for grading and drainage, water, sewer, and landscaping. Town shall also pay for utility design fees for permanent services.
- 2.3.4** JOC Contractor shall be responsible for all other permits and review fees not specifically listed in Section 2.3.1 and Section 2.3.3 above.
- 2.3.5** 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 Substantial Completion of the Project. Arrangements for construction water are the JOC Contractor's responsibility.

## **2.4 Pre-construction Conference**

- 2.4.1** After completion of Job Order Agreement, prior to the commencement of any Work on any Job Order, a **mandatory** pre-construction conference will be held.
- 2.4.2** The purpose of this conference is to establish a working relationship between the JOC Contractor, utility firms, and various Town 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.
- 2.4.3** Minimum attendance by the JOC Contractor shall be a responsible company/corporate official, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the JOC Contractor's safety officer.
- 2.4.4** The Job Order Notice to Proceed date will be established.

## **2.5 Control of Work**

- 2.5.1** Unless otherwise provided in the Job Order Agreement to be the responsibility of Town 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.
- 2.5.2** 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 time exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

- 2.5.3** JOC Contractor, its designee or the JOC Contractor's Superintendent shall be present at the Work site at all times that construction activities are taking place.
- 2.5.3.1** All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman 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.
- 2.5.4** 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.
- 2.5.5** 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 Town for resolution before proceeding with the work.
- 2.5.6** 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 Town at once.
- 2.5.7** 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 preformed or supervised by a licensed civil engineer or surveyor.
- 2.5.8** Any person employed by the JOC Contractor or any Subcontractor who, in the opinion of the Town, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the Town, 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 Town. The JOC Contractor or Subcontractor shall hold the Town harmless from damages or claims which may occur in the enforcement of this section.
- 2.5.9** JOC Contractor assumes responsibility to Town 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 Town and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** JOC Contractor shall coordinate the activities of all Subcontractors. If Town performs other work on the Project or at the Site with separate contractors under Town'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.



## **2.6 Control of Work Site**

- 2.6.1** 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. Upon 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 Town to occupy the Project or a portion of the Project for its intended use.
- 2.6.2** JOC Contractor shall take whatever 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 Town and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.
- 2.6.3** JOC Contractor shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI 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.
- 2.6.4** 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.

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

- 2.7.1** 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 Job Order.
- 2.7.2** The JOC Contractor shall review, approve, verify, and submit to the Town five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Job Order in accordance with the approved schedule as to cause no delay in the Work or in the activities of the Town or of separate contractors. Submittals made by the JOC Contractor, which are not required by the Job Order, may be returned without action.
- 2.7.3** 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 Town. Such Work shall be in accordance with approved submittals.
- 2.7.4** 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.
- 2.7.5** The JOC Contractor shall not be relieved of responsibility for deviations from requirements of the Job Order by the Town's approval of Shop Drawings, Product Data, Samples or

similar submittals unless the JOC Contractor has specifically informed the Town in writing of such deviation at the time of submittal and the Town 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 Town's approval thereof.

- 2.7.6** 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 Town on previous submittals.
- 2.7.7** Informational submittals upon which the Town is not expected to take responsive action may be so identified in the submittal.
- 2.7.8** When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the Town shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

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

- 2.8.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Job Order.
- 2.8.2** 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 Town.
- 2.8.3** The procedures and methods used to sample and test material will be determined by the Town. Unless otherwise specified, samples and tests shall be made in accordance with the following: the current version of the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details.
- 2.8.4** The Town will select a pre-qualified Town or Independent Testing Laboratory and will pay for initial Town Acceptance Testing.
  - 2.8.4.1** 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.
  - 2.8.4.2** When the first and subsequent tests indicate noncompliance with the Job Order, all retesting shall be performed by the same testing agency at the JOC Contractor's expense.
- 2.8.5** 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.
- 2.8.6** At the option of the Town, materials may be approved at the source of supply before delivery is started.
- 2.8.7** 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.
- 2.8.8** 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 Trade Names and Substitutions**

- 2.9.1** Unless indicated that no substitutions are permitted, if the Contract Document references equipment, materials or patented processes by manufacturer, trade name, make or catalog number, the JOC Contractor may be permitted to substitute or alternate items subject to the following:
- 2.9.2** The substitution shall be submitted by JOC Contractor in writing to the Town.
- 2.9.3** The JOC Contractor shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance and quality, and be suited to the same use as that specified.
- 2.9.4** The submittal shall state any required changes in the Job Order to adapt the design to the proposed substitution.
- 2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Job Order Time created by the substitution.
- 2.9.6** The JOC Contractor if requested by the Town shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.9.7** The Town will make the final decision and will notify the JOC Contractor in writing as to whether the substitution has been accepted or rejected.
- 2.9.8** If the Town does not respond with sufficient time for the JOC Contractor to perform with work with the substitution, the JOC Contractor shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

## **2.10 Project Record Document**

- 2.10.1** At the pre-construction conference as prescribed in Section 2.4.2 the Town Representative will describe the required documentation for the Record Documents for each Job Order.
- 2.10.1.1** During the construction period, the JOC Contractor shall maintain at the jobsite a set of prints of the Construction Document drawings and shop drawings for Record Document purposes. The JOC Contractor will 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 to be marked may include but are not limited to:
- Dimensional changes to the drawings.
  - Revisions to details shown on Drawings
  - Depths of foundations below first floor
  - Locations and depths of underground utilities
  - Revisions to routing of piping and conduits.
  - Revisions to electrical circuitry.
  - Actual equipment locations.
  - Duct size and routing.
  - Locations of concealed internal utilities.
  - Changes made by Change Order.
  - Details not on original Contract Drawings

- 2.10.1.2** Mark completely and accurately Record Document 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
- 2.10.1.3** Mark Project Record Drawing sets with red erasable colored pencil.
- 2.10.1.4** Note RFI Numbers, 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 Document prints and Shop Drawings to the Town or its representative for review and comment.
- 2.10.2** Immediately upon receipt of the reviewed Record Documents from the Town, the JOC Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the Town.
  - 2.10.2.1** A complete set of electronic Record Documents prepared in AutoCAD format compatible with Town of Queen Creek Community Development Services Department CADD technology. The Design Professional will provide files of the original Construction Documents to the JOC Contractor for the use of preparing these final Record Documents. Each drawing shall be clearly identified as an "As-Built Document."
  - 2.10.2.2** A complete set of reproducible mylars (4 mil.) from the final AutoCAD drawings and one (1) edge-bound blue-line or blackline sets reproduced from these mylars.
  - 2.10.2.3** The original copy of the Record Documents (redline mark-ups).

## **2.11 Project Safety**

- 2.11.1** 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.
- 2.11.2** JOC Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.3** 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.
- 2.11.4** The Safety Representative shall make routine daily inspections of the Site and shall hold documented weekly safety meetings with JOC Contractor's personnel, Subcontractors and others as applicable.
- 2.11.5** JOC Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Town-specific safety requirements set forth in the Contract Documents, provided that such Town-specific requirements do not violate any applicable Legal Requirement.

- 2.11.6** JOC Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Town's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.7** JOC Contractor's responsibility for safety under this Section 2.11 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.

## **2.12 Warranty**

- 2.12.1** JOC Contractor warrants to Town that the construction, including all materials and equipment furnished as part of the construction, shall be new, unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2** 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. This warranty exclusion does not relieve JOC Contractor of any obligation it may have to protect the Work during construction.
- 2.12.3** JOC Contractor's warranty obligation shall be for one year after final acceptance from Town.
- 2.12.4** Nothing in this warranty is intended to limit any manufacturer's warranty which provides Town with greater warranty rights than set forth in this Section 2.12 or the Contract Documents. JOC Contractor will provide the Town with all manufacturers' warranties upon Substantial Completion.

## **2.13 Correction of Defective Work**

- 2.13.1** The JOC Contractor shall be responsible for the completeness and accuracy of his reviews, reports, supporting data, and other work prepared or compiled under his obligation for this Agreement and shall correct his work, at his expense. The fact that the Town has accepted, approved or pays for the JOC Contractor's work shall in no way relieve the JOC Contractor of any of his responsibilities.
- 2.13.2** 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 one year 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 Town shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.3** During the Duration of the Work, JOC Contractor shall take meaningful steps to commence correction of such nonconforming Work as notified by the Town. 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 Duration of the Work, Town, in addition to any other remedies provided under the Contract Documents, may provide JOC Contractor with written notice that Town will commence correction of such nonconforming Work by any means necessary.

- 2.13.4** JOC Contractor shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above, within seven days of receipt of written notice from Town. 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 within such seven day period, Town, in addition to any other remedies provided under the Contract Documents, may provide JOC Contractor with written notice that Town will commence correction of such nonconforming Work by any means necessary.
- 2.13.5** If Town does perform such corrective Work, JOC Contractor shall be responsible for all reasonable costs incurred by Town in performing such correction.
- 2.13.6** For Nonconforming Work that creates an emergency requiring an immediate response, the JOC Contractor will respond and initiate corrections within twenty-four hours.
- 2.13.7** The one year period referenced in Section 2.12.3 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 Town may have regarding JOC Contractor's other obligations under the Contract Documents.

## **2.14 Fair treatment to workers.**

- 2.14.1** The Contractor shall keep fully informed of all Federal and State laws, County and Town ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The contractor shall protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

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## **SECTION 3 - Town's Services and Responsibilities**

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### **3.1 Duty to Cooperate**

- 3.1.1** Town 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**

- 3.2.1** Town shall furnish the JOC Contractor, at no cost to the JOC Contractor, the following information or services for this project:
- 3.2.1.1** One copy of data pertinent to the Work. However, the JOC Contractor shall be responsible for searching the records and requesting information required for the project.
- 3.2.1.2** All available data and information relative to policies, standards, criteria and studies.

- 3.2.1.3 For purpose of determining the Job Order Price, any Plans and Specifications.
- 3.2.1.4 For propose of Record Documents, a CADD file of the Construction Documents in AutoCAD format compatible with the Town of Queen Creek's Community Development Services Department CADD technology, Autodesk Map/CAD 2005 or a version acceptable to the Town.

### **3.3 Town's Representative**

- 3.3.1 Town's Representative shall be responsible for providing Town-supplied information and approvals in a timely manner to permit JOC Contractor to fulfill its obligations under the Contract Documents.
- 3.3.2 Town'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 Town may contract separately with one or more Design Professionals to provide architectural and/or engineering design of the Project.
- 3.4.2 The Town may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
  - 3.4.2.1 The Design Professional may provide administration of the Work. The Town and Contractor shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
  - 3.4.2.2 The Design Professional will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the Town informed of progress of the Work, and will endeavor to guard the Town against defects and deficiencies in the Work.
  - 3.4.2.3 The Design Professional will review and certify the JOC Contractor's Payment Requests.
  - 3.4.2.4 The Design Professional will have authority to reject Work that does not conform to the Contract Documents.
  - 3.4.2.5 The Design Professional will have authority to require additional inspection or testing of the Work in accordance with Section 2.7.
  - 3.4.2.6 The Design Professional will review and approve or take other appropriate action upon the JOC Contractor's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.6.
  - 3.4.2.7 The Design Professional will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Town or JOC Contractor. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

- 3.4.2.8** The Design Professional will prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.8.1
- 3.4.2.9** The Design Professional will conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.4.2.10** The Design Professional will receive and forward to the Town for the Town's review and records written warranties and related documents required by the Contract Documents and assembled by the JOC Contractor.

### **3.5 Town's Separate Contractors**

- 3.5.1** Town is responsible for all work performed on the Project or at the Site by separate contractors under Town's control. Town 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.

### **3.6 Permit Review and Inspections**

- 3.6.1** For clarification, permitting activities are handled by the Town of Queen Creek's Community Development Services Department.

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## **SECTION 4 – Contract Time and Job Order Time**

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### **4.1 Contract Time**

- 4.1.1** The Contract Time shall be 12 months. The Contract Time may be extended with up to four (4) additional 12 month renewal options. A Contract Amendment will be processed for any extension.
- 4.1.2** Contract Time shall commence on the Notice of Effective Date for this contract.
- 4.1.3** The option to extend will be exercised based on the contractor's performance and the needs of the Town.
- 4.1.4** This Agreement will remain in full force and effect during the performance of any Job Order.

### **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, the Work schedule as determined pursuant to Section 5.1 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 Section 6.



### **4.3 Substantial Completion**

- 4.3.1** Substantial Completion of each Job Order shall be in accordance with its definition in Section 1 as applicable to the Job Order.
- 4.3.2** Prior to notifying the Town in accordance with Section 4.3.3 below, JOC Contractor shall inspect the Work and prepare and submit to the Town a comprehensive list of items to be completed or corrected. 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 JOC Contractor to complete all Work in accordance with the Contract Documents.
- 4.3.3** JOC Contractor shall notify the Town 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 Town's receipt of JOC Contractor's notice, Town 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, Town 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 Town's and JOC Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.3.6** Town, 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 Section 4.3.5 above, (ii) JOC Contractor and Town 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) Town and JOC Contractor agree that Town's use or occupancy will not interfere with JOC Contractor's completion of the remaining Work.

### **4.4 Final Acceptance**

- 4.4.1** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance Town and JOC Contractor will jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.3.5. The Town will issue a Final Acceptance Letter for the agreement.

### **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, Town 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 Town the amount prescribed in Section 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 Agreement.

<b>LIQUIDATED DAMAGES</b>		
<b>Original Contract Amount</b>		<b>Daily Charges</b>
<b>From more than</b>	<b>To and including</b>	<b>Calendar Day or Fixed Date</b>
<b>\$ 0</b>	<b>\$ 25,000</b>	<b>\$ 210</b>
<b>\$ 25,000</b>	<b>\$ 50,000</b>	<b>\$ 250</b>
<b>\$ 50,000</b>	<b>\$ 100,000</b>	<b>\$ 280</b>
<b>\$100,000</b>	<b>\$ 500,000</b>	<b>\$ 430</b>
<b>\$500,000</b>	<b>\$1,000,000</b>	<b>\$ 570</b>

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## **SECTION 5- Contract Price and Job Order Price**

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### **5.1 Job Order Price**

- 5.1.1** The Town intends that each Job Order performed under this Agreement will not exceed \$1,000,000 in construction costs, but in no event will any Job Order exceed \$1,000,000.
- 5.1.1.1** For phased work, more than one Job Order may be assigned to one address or Site.
- 5.1.1.2** Each Job Order price is subject to adjustments made in accordance with Section 6.
- 5.1.1.3** 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.
- 5.1.1.4** The Job Order Price shall be as defined in Section 1. 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.
- 5.1.2** 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 Agreement and related documents will be given to the JOC Contractor.
- 5.1.3** The JOC Contractor will be asked to provide a proposal with Job Order Price and schedule indicating the Duration of the Work for the proposed Job Order based on the scope meeting and the provided documents.
- 5.1.4** The Town will review the submitted proposal. The Town and JOC Contractor shall negotiate in good faith and as expeditiously as possible an agreed upon Job Order Price and the Duration of the Work. To the extent possible, the Job Order Price shall be consistent with UPB. Upon reaching concurrence, the parties shall execute the Job Order Agreement reflecting the terms of the Job Order.

### **5.2 Job Order Price Proposal**

- 5.2.1** 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 (if required) and construction services required of the JOC Contractor. The any related documents will be given to the JOC Contractor.

- 5.2.2** 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** The Job Order Price will be calculated by multiplying the appropriate Cost-coefficient by the Unit Price for each task as indicated in the UPB.
- 5.2.3.1** In preparing cost proposals from the unit price book, the Job Order Contractor will first determine if a line item, as described in the UPB, can be used to define the work at hand. If there is no line item available, then the Job Order Contractor will use the process described in Section 5.2.3.3 below to develop the cost proposal.
- 5.2.3.2** For any administrative work required for a complete Project, the Job Order Contractor will estimate the actual cost for the work plus the approved overhead and profit factor.
- 5.2.3.3** For any item not identified in the UPB, a fair and reasonable price will be negotiated between the Job Order Contractor and the Town and the resulting task and unit price will be added to the unit price book by addendum. The unit price will be calculated by considering the estimated actual cost for the task, the overhead and profit factor, and the need to apply the Cost-coefficient.
- 5.2.3.4** If application of a Unit Price will cause substantial inequity to Town or JOC Contractor because of differences in the character or quantity of such unit items such Unit Prices may be negotiated.
- 5.2.3.5** 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.
- 5.2.4** The JOC Contractor guarantees to bring each Job Order within the Job Order Price as adjusted or JOC Contractor alone will be required to pay the difference between the actual cost and the Job Order Price as adjusted.
- 5.2.5** The Unit Prices and the Cost-coefficient is subject to adjustment by Contract Amendment in accordance to Section 6.

### **5.3 Mark up for Changes**

- 5.3.1** If the Job Order Price requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Section 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the Job Order proposal.

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

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### **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. In the case of a continuing delay only one request is necessary.
- 6.1.3** By way of example, events that will entitle JOC Contractor to an extension of the Job Order Time include acts or omissions of Town or anyone under Town'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.
- 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 Town 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 Section 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 Section 6.1 that are beyond the control of both JOC Contractor and Town, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

## **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.
- 6.2.2** Upon encountering a Differing Site Condition, JOC Contractor shall provide prompt written notice to Town of such condition, which notice shall not be later than forty-eight (48) hours 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 Town 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 Town shall be at the JOC Contractor's risk.

## **6.4 Deviations in Actual Amounts (*Note: For UPB Only*)**

- 6.4.1** If there is a deviation in the quantities utilized by the JOC Contractor to determine the Job Order Price and actual approved quantities utilized to complete the Work, JOC Contractor or the Town will be entitled to an adjustment in the Job Order Price to extent JOC Contractor's cost is impacted.

## **6.5 Town Requested Change in Job Order**

- 6.5.1** The Town reserves the right to make, at any time during the progress of a Job Order, such alterations as may be found necessary or desirable.
- 6.5.2** Such alterations and changes shall not invalidate this Agreement or the Job Order Agreement 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.
- 6.5.3** The Town 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 a mutual agreed upon cost and time.

## **6.6 Legal Requirements**

- 6.6.1** 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 Agreement affecting the performance of the Work, or the date of the Job Order Price. Such effects may include, without limitation, revisions required to be made to the Construction Documents because of changes in Legal Requirements.

## **6.7 Job Order Adjustments**

- 6.7.1** Town 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 Job Order Adjustment reflecting the terms of the changes.
- 6.7.2** All changes to a Job Order authorized by Change Orders shall be performed under the conditions of the Contract Documents.

## **6.8 Minor Changes in a Job Order**

- 6.8.1** The Town 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 affected by written order and shall be binding on the Town and JOC Contractor. The JOC Contractor shall carry out such written orders promptly.
- 6.8.2** JOC Contractor may make minor changes to a Job order, provided, however that JOC Contractor shall promptly inform Town, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by JOC Contractor.
- 6.8.3** Minor changes to a Job Order will not involve an adjustment in the Job Order Price and/or Job Order Time.

## **6.9 Job Order Price Adjustments**

- 6.9.1** The increase or decrease in Job Order Price resulting from a change in the Work shall be determined by one or more of the following methods:
  - 6.9.1.1** Unit prices, including the cost coefficient, set forth in the UPB or as subsequently agreed to between the parties;
  - 6.9.1.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Town; and
  - 6.9.1.3** Costs, fees and any other markups set forth in Section 5.1.
- 6.9.2** If an increase or decrease cannot be agreed to as set forth in items 6.9.1.1 through 6.9.1.3 above and the Town issues a Change Order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Job Order Agreement. JOC Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.9.3** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Town 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.
- 6.9.4** If Town and JOC Contractor disagree upon whether JOC Contractor is entitled to be paid for any services required by Town, or if there are any other disagreements over the scope of a Job Order or proposed changes to a Job Order, Town and JOC Contractor shall resolve the disagreement pursuant to Section 8 hereof and further detailed by the current "Notification of Changed Conditions and Dispute Resolution" Section of MAG.
  - 6.9.4.1** As part of the negotiation process, JOC Contractor shall furnish Town with a good faith estimate of the costs to perform the disputed services in accordance with Town's interpretations.
  - 6.9.4.2** If the parties are unable to agree and Town expects JOC Contractor to perform the services in accordance with Town's interpretations, JOC Contractor shall proceed to perform the disputed services, conditioned upon Town issuing a written order to JOC Contractor (i) directing JOC Contractor to proceed and (ii) specifying Town's interpretation of the services that are to be performed.

## **6.10 Annual Changes to Unit Prices and Cost-coefficients (Note: For UPB)**

- 6.10.1** If a unit price needs to be adjusted, a fair and reasonable price will be negotiated between the JOC Contractor and the Town and the tasks unit price will be adjusted in the UPB by addendum.
- 6.10.2** If this Agreement is extended pursuant to Section 4.1, the Cost-coefficient may be adjusted at the time of the annual extension.
  - 6.10.2.1** The Cost-coefficient will be adjusted annually for documented changes in taxes, bonding and insurance.

**6.10.2.2** Annual adjustment for changes in the JOC Contractor's operating costs may be negotiated.

**6.10.2.3** Annual adjustment due to new Unit Prices may be negotiated.

**6.10.3** During the Contract Time between extension dates the JOC Contractor may request in writing to the Town Engineer a JOC Amendment to adjust the Unit Price(s).

## **6.11 Emergencies**

**6.11.1** 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 resulting from emergency work under this Section 6.11 shall be determined as provided in this Section 6.

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## **SECTION 7- Procedure for Payment**

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

**7.1.1** At the pre-construction conference prescribed in Section 2.4, JOC Contractor shall submit for Town's review and approval a schedule of values. The schedule of values will include values for all items comprising the Job Order Price and will serve as the basis for monthly progress payments made to JOC Contractor throughout the Work.

**7.1.2** At least five (5) working days prior to the date established for a progress payment, the JOC Contractor shall meet with the Town's Representative to review the progress of the Work as it will be reflected on the Job Order Payment Request.

**7.1.3** 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 title to all Work will pass to Town free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

### **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 Town on the monthly anniversary of the Job Order Notice to Proceed, beginning with the first month after the Job Order Notice to Proceed.

**7.2.3** The Job Order Payment Request may include payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.

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

**7.2.3.2** For material and equipment stored off the Site, the Town must approve the storage. The material and equipment must be stored within 25 miles of the project site and be accessible

for Owner's inspection. Title to such materials and equipment protects the Town's interest and shall include applicable insurance, bonding, storage and transportation to the Site. Proceed

- 7.2.3.3** All bonds and insurance required for stored materials shall name the Town as the loss payee to the extent of its interest in the stored materials.

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

- 7.3.1** Town shall make payment in accordance with A.R.S. 34-607. The payment will be less the total of payments previously made, and less amounts properly withheld under Section 7.5 below.
- 7.3.2** Town shall pay JOC Contractor all amounts properly due. If Town 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 Town. The notice shall indicate the specific amounts Town intends to withhold, the reasons and contractual basis for the withholding, and the specific measures JOC Contractor must take to rectify Town's concerns. JOC Contractor and Town will attempt to resolve Town's concerns. If the parties cannot resolve such concerns, JOC Contractor may pursue its rights under the Contract Documents, including those under Section 8 hereof.

### **7.4 Final Payment**

- 7.4.1** After receipt of a final JOC Contractor Payment Request, Town shall make final payment 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 Town.
- 7.4.2** At the time of submission of its final JOC Contractor Payment Request, JOC Contractor shall provide the following information:
- 7.4.2.1** 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 Town's interests; and
- 7.4.2.2** 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 Town and remaining unsettled at the time of final payment.

### **7.5 Payments to Subcontractors or Supplier**

- 7.5.1** JOC Contractor shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the Town. 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 Town 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.
- 7.5.2** If the JOC Contractor fails to make payments in accordance with these provisions, the Town may take any one or more of the following actions and JOC Contractor agrees that the Town may take such actions:



- 7.5.2.1** Hold the JOC Contractor in default under this Agreement.
- 7.5.2.2** Withhold future payments until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.
- 7.5.2.3** Reject all future offers to perform work for the Town from the JOC Contractor for a period not to exceed one year from Substantial Completion date of this Project; or
- 7.5.2.4** Terminate this agreement.
- 7.5.3** 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. When disputed claim is resolved through ADR or otherwise, the JOC Contractor and Subcontractor or suppliers agree to implement the resolution within seven (7) calendar days from the resolution date.
- 7.5.4** Should the Town 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.
- 7.5.5** JOC Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

## **7.6 Record Keeping and Finance Controls**

- 7.6.1** Records of the JOC Contractor's direct personnel payroll, reimbursable expenses pertaining to each Job Order and records of accounts between the Town and JOC Contractor shall be kept on a generally recognized accounting basis and shall be available for three years after completion of the Project.
- 7.6.2** The Town, 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 job order adjustments.
- 7.6.3** The Town reserves the right to decrease Contract Price and/or payments made on this Agreement 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.
- 7.6.4** The JOC Contractor shall include a similar provision in all of its agreements with Sub consultants and Subcontractors providing services under the Contract Documents to ensure the Town, its authorized representative, and/or the appropriate federal agency, has access to the Sub consultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.6.5** The Town reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Sub consultant's and Subcontractor's contracts, and one or more Sub consultants and/or Subcontractors do not allow the Town to audit their records to verify the accuracy and appropriateness of pricing data.

## **SECTION 8- Claims and Disputes**

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

- 8.1.1** If either JOC Contractor or Town 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 and as detailed by the current "Notification of Changed Conditions and Dispute Resolution" Section of the Maricopa Association of Government ("MAG") Specifications.
- 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.

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

- 8.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, JOC Contractor and Town each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.2.2** JOC Contractor and Town will first attempt to resolve disputes or disagreements at the field level through discussions between JOC Contractor's Representative and Town's Representative.
- 8.2.3** If a dispute or disagreement cannot be resolved through JOC Contractor's Representative and Town's Representative, JOC Contractor's Senior Representative and Town'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. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

### **8.3 Duty to Continue Performance**

- 8.3.1** Unless provided to the contrary in the Contract Documents, JOC Contractor shall continue to perform the Work and Town shall continue to satisfy its payment obligations to JOC Contractor, pending the final resolution of any dispute or disagreement between JOC Contractor and Town.

## **8.4 Representatives of the Parties**

### **8.4.1 Town's Representatives**

- 8.4.1.1** Town designates the individual listed below as the Town's Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes.

Mr. Dick Schaner, Transportation Director (or his successor)  
22350 S. Ellsworth Road  
Queen Creek, AZ 85242  
480-358-3138

- 8.4.1.2** The Town will designate an individual for each Job Order as the Town's Representative. This person will manage the Job Order.

### **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 Section 8.2.3:

Name:  
Title:  
Address:  
Telephone #:

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

## **SECTION 9 – Suspension and Termination**

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### **9.1 Town's Right to Shop Contract Services**

- 9.1.1** Town may, at its discretion and without cause, order JOC Contractor in writing to stop and suspend the Work on a Job Order. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- 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 Town.

### **9.2 Termination for Convenience**

- 9.2.1** Upon receipt of written notice to JOC Contractor, Town may, at its discretion and without cause, elect to terminate this Agreement or any Job Order.
- 9.2.2** If the Town 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 Town all right, title and interest of the JOC Contractor under the subcontracts terminated, in which case the Town 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 which the Town 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 Town shall pay JOC Contractor the following:
  - 9.2.5.1** The schedule of values of the unit price book for its completed Work and materials supplied as of the date of termination.
  - 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 Town 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 Section 7.6.

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

- 9.3.1** If the Town 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 Town 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, Sub consultants and/or Subcontractors, (v) execute 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 Town, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 9.3.3 and 9.3.4 below.
- 9.3.3** Upon the occurrence of an event set forth in Section 9.3.2 above, Town 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 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 Town may give a second written notice to JOC Contractor of its intent to terminate within an additional seven (7) day period.
- 9.3.3.2** If JOC Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Town 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 Section 9.3.3.2 above, Town 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 Town 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 Town prior to its default.
- 9.3.6** If Town'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 Town. 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 Town in connection with the procurement and defense of claims arising from JOC Contractor's default.
- 9.3.7** If Town terminates this Agreement for cause and the termination is later 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 Section 9.2.

## **SECTION 10 - Insurance and Bonds**

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### **10.1 Insurance Requirements**

- 10.1.1** Concurrently with the execution of this Agreement, the JOC Contractor shall furnish the Town 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, or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- 10.1.2** JOC Contractor, Subcontractors and Sub consultants 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.
- 10.1.4** The Town 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 Sub consultants and JOC Contractor is free to purchase such additional insurance as may be determined necessary.

## **10.2 Minimum Scope and Limits of Insurance**

- 10.2.1** JOC Contractor shall provide coverage with limits of liability not less than those stated below. In some cases, additional insurance coverage may be required with amounts greater than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

- 10.2.2 Commercial General Liability – Occurrence Form Policy** shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- 10.2.2.1** The Policy shall be endorsed to include the following additional insured language: **"The Town of Queen Creek shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor"**.

- 10.2.3 Automobile Liability:** Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this contract.

Combined Single Limit (CSL)	\$1,000,000
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- 10.2.3.1** The Policy shall be endorsed to include the following additional insured language: **"The Town of Queen Creek shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the contractor"**.

- 10.2.4 Workers Compensation and Employers' Liability**

Workers Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- 10.2.4.1** The policy shall contain a waiver of subrogation against the Town of Queen Creek.

- 10.2.4.2** This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

## **10.3 Additional Insurance Requirements.**

- 10.3.1** The policies shall include, or be endorsed to include, the following provisions:

- 10.3.2 On insurance policies where the Town of Queen Creek is named as an additional insured, the Town of Queen Creek shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- 10.3.3 The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the Town of Queen Creek.
- 10.3.4 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

#### **10.4 Notice of Cancellation**

- 10.4.1 Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after (30) days prior written notice has been given to the Town, except when cancellation is for non-payment for premium, then ten (10) days notice may be given. Such notice shall be sent directly to the Town of Queen Creek JOC Coordinator and shall be sent by certified mail, return receipt requested to 22350 S. Ellsworth Rd., Queen Creek, AZ 85242.

#### **10.5 Acceptability of Insurers**

- 10.5.1 Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of at least B++ or a Financial Performance Rating (FPR) of at least 6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the Town. The Town in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### **10.6 Verification of Coverage**

- 10.6.1 Contractor shall furnish the Town with certificates of insurance (ACORD form or equivalent approved by the Town) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.6.2 All certificates and any required endorsements are to be received and approved by the Town before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- 10.6.3 All certificates required by this Contract shall be sent directly to the Town of Queen Creek JOC Coordinator. The Town project/contract number and project description shall be noted on the certificate of insurance. The Town reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE TOWN'S RISK MANAGEMENT DIVISION.**
- 10.6.4 If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the Town's requirements, the contractor must submit a current insurance certificate (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the insurance certificate is not submitted with the payment request.

## **10.7 Subcontractors**

- 10.7.1** JOC Contractors' certificate(s) shall include all Subcontractors as additional insured under its policies **or** subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Subcontractors insurance must list JOC Contractor and Town as additional insured under its policies, and provide Town with all necessary endorsements demonstrating that Town is an additional insured.

## **10.8 Approval**

- 10.8.1** Any modification or variation from the insurance requirements in this Contract shall be made by the Town's Legal Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## **10.9 Bonds and Other Performance Security**

- 10.9.1** Prior to execution of each individual Job Order agreement, the contractor must provide a performance bond and a payment bond, each in an amount equal to the full amount of the agreed upon cost for that Job Order.
- 10.9.2** 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.
- 10.9.3** The bonds shall be made payable and acceptable to the Town of Queen Creek.
- 10.9.4** 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.
- 10.9.4.1** If one Power of Attorney is submitted, it shall be for twice the total amount required in Section 10.9.1 above.
- 10.9.4.2** If two Powers of Attorney are submitted, each shall be for the total amount required in Section 10.9.1 above. Personal or individual bonds are not acceptable.
- 10.9.5** 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.
- 10.9.6** All bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company.

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## **SECTION 11 - Indemnification**

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- 11.1** To the fullest extent permitted by law, JOC Contractor agrees to indemnify, defend and save harmless the Town of Queen Creek, its officers, directors, agents, and employees, and any



jurisdiction or agency issuing permits for any work included in each JOC, its officers, agents, and employees, hereinafter referred to as "indemnatee," from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damages, expenses, costs, or claims of any character or any nature arising out of or related to this Contract, to the extent such suits, claims, actions, losses, damages, and expenses are caused by JOC Contractor or its subcontractors, officers, directors, employees, agents or any other person or entity for whom JOC Contractor is responsible. It is agreed that JOC Contractor will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the Town, its officers, officials, agents and employees for losses arising from the work performed by the JOC Contractor for the Town.

- 11.2** If an employee of JOC Contractor, Sub consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Town, its officers, directors, employees, or agents, JOC Contractor's indemnity obligation set forth in Section 11.1 above shall not be limited by any limitation on the amount.

### **11.3 Intellectual Property**

- 11.3.1** 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 Town 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.

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## **SECTION 12 – General Provisions**

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### **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 Section 1. Specifications take precedence over drawings 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 Town 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**

- 12.2.1** 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**

- 12.3.1** Town 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**

- 12.4.1** Town 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**

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

## **12.6 Assignment**

- 12.6.1** Neither JOC Contractor nor Town 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.

## **12.7 Successorship**

- 12.7.1** JOC Contractor and Town intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

## **12.8 Conflict in Language**

- 12.8.1** All services performed shall conform to all applicable Town of Queen Creek's 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.

## **12.9 Third Party Beneficiary**

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

## **12.10 Governing Law**

- 12.10.1** 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, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

## **12.11 Severability**

- 12.11.1** 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.

## **12.12 Compliance with Federal Laws**

- 12.12.1** JOC Contractor understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The JOC Contractor agrees to comply with these laws in performing the Contract Documents and to permit the Town to verify such compliance.

## **12.13 Legal Requirements**

- 12.13.1** 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.

## **12.14 Independent Contractor**

- 12.14.1** The JOC Contractor is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the Town 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 Town as to the results of the work only. These results shall comply with all applicable laws and ordinances.

## **12.15 Town's Right of Cancellation**

- 12.15.1** All parties here to acknowledge that this Agreement is subject to cancellation by the Town of Queen Creek pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

## **12.16 Survival**

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

## **12.17 Covenant Against Contingent Fees**

- 12.17.1** 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 Town Council, or any employee of

the Town of Queen Creek has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the Town of Queen Creek 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.

## **12.18 No Waiver**

**12.18.1** 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.

## **12.19 Headings**

**12.19.1** 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.

## **12.20 Notices**

**12.20.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To JOC Contractor:

Name, Title  
Firm  
Address  
City, State, Zip  
Office Phone:  
Fax:

To Town:

Dick Schaner  
Town of Queen Creek, Transportation Department  
22350 S. Ellsworth Rd.  
Queen Creek, AZ 85242  
Phone: 480-358-3138  
Fax: 480-358-3133

With a Copy to:

Terence Fawley  
Town of Queen Creek, CIP Manager  
22350 S. Ellsworth Rd.  
Queen Creek, AZ 85242  
Phone: 480-358-3061  
Fax: 480-358-3133

Or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

- 12.20.2** Notices Related to Payment, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, bonds or other instrument securing the performance of this Agreement, including but not limited to, surety bonds, performance bonds, payment bonds, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To JOC Contractor:

Name, Title  
Firm  
Address  
City, State, Zip  
Office Phone:  
Fax:

To Town:

Dick Schaner  
Town of Queen Creek, Transportation Department  
22350 S. Ellsworth Rd.  
Queen Creek, AZ 85242  
Phone: 480-358-3175  
Fax: 480-358-3138

With a Copy to:

Terence Fawley  
Town of Queen Creek, CIP Manager  
22350 S. Ellsworth Rd.  
Queen Creek, AZ 85242  
Phone: 480-358-3061  
Fax: 480-358-3133

Or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

## **12.21 Equal Opportunity/Affirmative Action**

- 12.21.1** The Town will endeavor to ensure in every way possible that minority and women-owned small business enterprises shall have every opportunity to participate in providing professional services, purchased goods, and contractual services to the Town without being discriminated against on the grounds of race, religion, sex, age, or national origin.

The JOC Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability and further agrees not to engage in any unlawful employment practices. The JOC Contractor further agrees to insert the forgoing provisions in all Work hereunder.

- 12.21.2** The following two paragraphs apply to the JOC Contractor named herein and shall appear in all contracts between the JOC Contractor and any and all Subcontractors who are employed on this Project and the JOC Contractor further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

"Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

## **12.22 Key Personnel and Staffing**

- 12.22.1** Prior to the start of any Contract Services under this Agreement, the JOC Contractor shall submit to the Town detailed résumés of key personnel that will be involved in performing services prescribed in this Agreement. At any time hereafter that the JOC Contractor desires to change key personnel while performing under the Contract, the JOC Contractor shall submit the qualifications of the new personnel to the Town for prior approval.
- 12.22.2** The JOC Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the Town, throughout the performance of this Agreement to ensure acceptable and timely completion of the scope of services. If the Town objects, with reasonable cause, to any of the JOC Contractor's staff, the JOC Contractor shall take prompt corrective action acceptable to the Town and, if required, remove such personnel from the Project and replace with new personnel agreed to by the Town.

## **12.23 Hazardous Materials**

- 12.23.1** 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 Town.
- 12.23.2** 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 Town may agree, in writing, to continue work in non-affected areas onsite.
- 12.23.3** An extension of Job Order Time may be granted in accordance with Section 6.
- 12.23.4** The JOC Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

- 12.23.5** The JOC Contractor & Design Engineer shall avoid specification of construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the Town.

## **12.24 Traffic Control**

- 12.24.1** JOC Contractor will comply with all provisions of the latest approved edition of the Manual on Uniform Traffic Control Devices issued by the US Department of Transportation in conjunction with the Federal Highway Administration and any other traffic control provisions as may be provided in the technical specifications. JOC Contractor shall submit Traffic Control Plans to the Town Traffic Engineering Division, through Subcontracted Traffic Control provider using the Town's normal submittal procedure, forty-eight (48) hours in advance of any work within the public right-of-way.

## **12.25 JOC Contractor and Subcontractor Employee Security Inquiries**

- 12.25.1** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, JOC CONTRACTOR shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

### **12.25.2 Security Inquiries**

- 12.25.2.1** JOC Contractor acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). JOC Contractor shall perform all such security inquiries and shall make the results available to Town for all employees considered for performing work (including supervision and oversight) under this Agreement. Town may make further security inquiries. Whether or not further security inquiries are made by Town, Town may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by JOC contractor for performing work under this Agreement. Employees rejected by Town for performing services under this Agreement may still be engaged by JOC Contractor for other work not involving the Town of Queen Creek. An employee rejected for work under this Agreement shall not be proposed to perform work under other Town contracts or engagements without Town's prior approval.

### **12.25.3 Criteria for Evaluating Security Inquiries**

- 12.25.3.1** Once formally adopted by Town, criteria for excluding an individual from performing work under this Agreement shall be communicated by Town to JOC CONTRACTOR and used by JOC CONTRACTOR as a factor in making its decision. Prior to such adoption, JOC CONTRACTOR shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by Town in evaluating its own personnel.

### **12.25.4 Additional Town Rights Regarding Security Inquiries**

- 12.25.4.1** In addition to the foregoing, Town reserves the right to: (1) have an employee/prospective employee of JOC CONTRACTOR be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to

A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of JOC CONTRACTOR 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of JOC CONTRACTOR performing work (including supervision and oversight) under this Agreement.

**12.25.5 Terms of This Provision Applicable to all of JOC CONTRACTOR'S Contracts and Subcontracts**

**12.25.5.1** JOC CONTRACTOR shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

**12.25.6 Materiality of Security Inquiry Provisions**

**12.25.6.1** The Security Inquiry provisions of this Agreement, as set forth above, are material to Town's entry into this Agreement and any breach thereof by JOC CONTRACTOR may, at Town's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject JOC CONTRACTOR to liability for its breach of contract.



**TOWN OF QUEEN CREEK, ARIZONA  
TRANSPORTATION DEPARTMENT**

**Job Order Contracting for Pavement & Maintenance**

**CONTRACT NO. \_\_\_\_\_**

**AGREEMENT**

IN WITNESS WHEREOF, two (2) 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.

**Per the individual job orders issued and a multiplier applied to the Unit Price Book**

**Contractor Name**

**A licensed Arizona Corporation  
(CONTRACTOR)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Printed Name and Title

(Corporate Seal)

**Town of Queen Creek, AZ  
an Arizona Municipal Corporation  
(OWNER)**

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

By: \_\_\_\_\_  
Transportation Director

APPROVED AS TO FORM  
THIS \_\_\_\_\_ DAY \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
ATTEST: (Signature)

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
ATTEST: Jennifer Robinson  
Town Clerk

Authority-Town Council Awarded  
\_\_\_\_\_, 200\_\_