

# STANDARD FORM

## JOB ORDER CONTRACT

Revised Draft: 05/28/04

draft

### DISCLAIMER

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**draft**

**JOB ORDER CONTRACTING  
CONTRACT**

THIS CONTRACT, entered into and made effective the \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between \_\_\_\_\_, a (governmental organization, non-profit organization, proprietorship, partnership or corporation) organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter referred to as Owner) and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ (hereinafter referred to as Job Order Contractor).

WITNESSETH:

THAT IN CONSIDERATION of the mutual promises and covenants hereinafter contained in this Contract by these presents do agree, as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Owner.** Owner means Owner's senior manager, Contracting Officer or a duly authorized representative which means any person specifically authorized to act for Owner by executing the Contract, and any modification thereto. Owner's duties include administration of the Contract, including the negotiation of change orders and modifications and assessing Job Order Contractor's technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract documents.

**1.2 Job Order Contractor.** Job Order Contractor means Job Order Contractor's senior manager or its duly authorized representative or any person specifically authorized to act for Job Order Contractor by executing the Contract, and any modifications thereto. Job Order Contractor's duties include administration of the Contract and performance of the Work.

**1.3 Contract.** Contract means this agreement including its attachments and any Job Orders that may be issued.

**1.4 Subcontract.** Subcontract means any Contract including purchase orders (other than one involving an employer-employee relationship) entered into by Job Order Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

**1.5 Job Order.** Job Order means a specific written agreement between the Owner and the Job Order Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

**1.6 Work.** Work means in response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in Attachment "A" Contract Pricing Coefficients and in Attachment "B" Scope of Services both of which are incorporated herein and made a part hereof.

**1.7 Substantial Completion.** Substantial Completion means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete and accepted so that Owner can occupy and use the Work or a portion thereof for its intended purposes.

**1.8 Final Acceptance.** [Gary need to define][Missing]

**1.9 Unit Price Book.** A listing of construction or construction related tasks together with a specific unit of measurement and a unit price.

## **ARTICLE 2 CONTRACT TERM**

**2.1 Contract Term.** The term of the Contract shall commence on the date it was executed by both parties and shall terminate on \_\_\_\_\_, 200\_, or otherwise in accordance with the terms and conditions of this Contract. The term can be extended up to an additional \_\_\_\_\_ years, the optional periods exercised in twelve (12) month segments after thirty (30) days advance written notice of an intent to exercise an option from the Owner to the Job Order Contractor. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order.

**2.2 Job Order.** In response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall perform the Work, except as may be specified elsewhere in the Contract, which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in Attachment "A" Contract Pricing Coefficients and in Attachment "B" Scope of Services both of which are incorporated herein and made a part hereof.

**2.3 Mutual Agreement.** This Contract embodies the agreement of Owner and Job Order Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order, nor requiring Job Order Contractor to accept any Job Order, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

## **ARTICLE 3**

## **PERFORMANCE OF THE WORK**

**3.1 Job Order Agreement.** Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Owner. Job Orders shall be in accordance with the requirements specified in Attachment "B" Scope of Services, and shall set forth, with the necessary particularity, the following:

- a. Contract number along with Job Order Contractor's name;
- b. Job Order number and date;
- c. The agreed Work and applicable technical specifications and drawings;
- d. The agreed period of performance and, if required by Owner, a work schedule;
- e. The place of performance;
- f. The agreed total price for the Work to be performed;
- g. Submittal requirements;
- h. Owner's authorized representative who will accept the completed Work;
- i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
- j. Such other information as may be necessary to perform the Work.

### **3.2 Contractor Duties and Obligations.**

**3.2.1 Permits & Responsibilities.** Job Order Contractor shall be responsible for processing of drawings, for approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Owner will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the Contract.

**3.2.2 Jobsite Superintendent.** During performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign a competent superintendent who will supervise the performance of Work and is satisfactory to Owner and has authority to act for Job Order Contractor.

**3.2.3 Construction Layout.** Job Order Contractor shall lay out its work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

**3.2.4 Operations & Storage.** Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.

**3.2.5 Temporary Structures.** Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Job Order Contractor only with the approval of Owner and shall be built with labor and materials furnished by Job Order Contractor without expense to Owner. The temporary buildings and utilities shall remain the property of Job Order Contractor and shall be removed by Job Order Contractor at its expense upon the completion of the Work. With the written consent of Owner, the buildings and utilities may be abandoned and need not be removed.

**3.2.6 Roadways.** Job Order Contractor shall use only established roadways or temporary roadways constructed by Job Order Contractor when and as authorized by Owner. Job Order Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.

**3.2.7 Cleaning Up & Refuse Disposal.** Job Order Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly condition satisfactory to Owner.

**3.2.7.1** Final cleanup of the premises shall be included in the period of performance of the Job Order.

**3.2.7.2** Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site.

**3.2.7.3** Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Job Order Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

**3.2.8 Contractor Preservation.** Job Order Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the site, which are not to be removed and which do not unreasonably interfere with the Work required under the Job Order. Job Order Contractor shall only remove trees when specifically authorized

to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workmen, Job Order Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Owner.

**3.2.9 Existing Improvements and Utilities.** Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to Job Order Contractor.

**3.2.10 Safety.** Job Order Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Job Order Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

**3.2.10.1 Contractor Safety Compliance.** Job Order Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

**3.2.10.2 Safety Training.** Job Order Contractor shall provide its employees Red Cross certified first aid and CPR training, to include special training prior to working with hazardous materials or operations.

**3.2.10.3 Contractor Provided Warnings.** Job Order Contractor shall provide warning signs, barricades and verbal warnings as required.

**3.2.10.4 Emergency Procedures.** Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

**3.2.10.5 Accident Notification.** Job Order Contractor shall promptly notify Owner of any recordable accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Owner.

**3.2.10.6 Jobsite Safety Documents.** Job Order Contractor shall maintain a set of OSHA articles and Material Safety Data Sheets (MSDS) at the jobsite office as they apply to the Work being performed. Copies shall be provided to Owner when requested.

**3.2.10.7 Contractor's Safety Program.** Job Order Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of the initial Job Order and prior to the commencement of the Work.

**3.2.10.8 Contractor Safety Representative.** Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Job Order Contractor along with its safety policies and program procedures.

**3.2.10.9 Emergency Medical Treatment.** Job Order Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

**3.2.10.10 Owner's Right to Monitor.** Owner reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order in accordance with Article 14.

**3.2.10.11 First Aid Kit.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a completely stocked first aid kit which contains all standard emergency medical supplies.

**3.2.10.12 Fire Extinguisher.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a fully charged fire extinguisher appropriate for the potential fire hazard.

**3.2.11 Dissemination of Contract Information.** Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Owner.

**3.2.12 Shop Drawings.** Job Order Contractor's duties under this Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner.

**3.2.13 Jobsite Drawings and Specifications.** Job Order Contractor shall keep on the Work site a copy of the drawings and specifications and shall at all times give Owner access thereto.

### **3.3 Owner Rights and Obligations.**

### **3.3.1 Suspension of Work.**

**3.3.1.1 Owner's Written Order.** Owner may order Job Order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for a period of time that Owner determines reasonably appropriate.

**3.3.1.2 Work Delay or Suspension.** If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Owner in the administration of a Job Order, or by Owner's failure to act within the time specified in the Job Order, an adjustment shall be made for any increase in the cost of performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

**3.3.1.3 Contractor Costs.** A claim under this Subparagraph 3.3.1 shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Owner in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

**3.3.2 Owner's Right to Possession.** Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, Owner shall furnish Job Order Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of Work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Owner possession or use shall not be deemed an acceptance of any Work under this Contract.

**3.3.2.1 Owner's Possession or Use.** While Owner has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of Subparagraph 3.2.1. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

**3.3.3 Other Contracts.** Owner may undertake or award other Contracts for additional work at or near the site of Work under this Contract. Job Order Contractor shall fully cooperate with the other Contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Job Order Contractor shall not commit or permit any act that will interfere with the performance of its Work by any other contractor or by Owner's employees.

**3.4 Job Order Amendment.** Job Orders may be amended by Owner in the same manner as they are issued.

**3.5 Job Order Value.** The minimum Job Order value is \$\_\_\_\_\_ unless waived by Job Order Contractor. The maximum Job Order value is \$\_\_\_\_\_ unless waived by the Job Order Contractor.

## **ARTICLE 4 JOB ORDER DOCUMENTS**

**4.1 Specification and Drawings.** Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

**4.1.1** Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Owner is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," "acceptable to," or "satisfactory to" Owner, unless otherwise expressly stated.

**4.1.2** Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

**4.2 Shop Drawings.** Shop drawings means drawings submitted to Owner by Job Order Contractor showing in detail:

- a. The proposed fabrication and assembly of structural elements and,
- b. The installation (i.e., form, fit and attachment details) of materials or equipment.
- c. The construction and detailing of elements of the Work.

**4.2.1** Shop drawings include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

**4.3 Shop Drawing Coordination.** Job Order Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Job Order Contractor's approval may be returned for

resubmission. Owner will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such approval shall be at Job Order Contractor's risk. Approval by Owner shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with Paragraph 4.4 below.

**4.4 Shop Drawing Modifications.** If shop drawings show variations from the Job Order requirements, Job Order Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

**4.5 Shop Drawing Omissions.** Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

**4.6 Owner Furnished Drawings.** Job Order Contractor shall check all Owner furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Any errors or omissions in Owner furnished drawings are the responsibility of the Owner to rectify, including associated costs. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

**4.7 Shop Drawing Submittal.** Job Order Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Job Order Contractor with annotation of approval or rejection within one (1) week after submission, unless a longer review period is necessary by mutual agreement between Owner and Job Order Contractor.

**4.8 Use of Job Order Documents.** All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever. In addition, Owner agrees to hold Job Order Contractor harmless to the extent permitted by law from any legal liability arising out of the Owner's use of such materials.

**ARTICLE 5  
MATERIAL AND WORKMANSHIP**

**5.1 Suitability of Material and Equipment.** All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Owner, is equal to that named in the specifications.

**5.2 Owner Approval.** Job Order Contractor shall obtain Owner's approval of the equipment to be incorporated into the Work. When requesting approval, Job Order Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the equipment. When required by the Contract or by Owner, Job Order Contractor shall also obtain Owner's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

**5.3 Testing of Materials.** Unless otherwise specified in a Job Order, the Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work. Reimbursement for testing required by third party entities will be included in the individual Job Order.

**5.4 Workmanship.** All work under the Contract shall be performed in a skillful and workmanlike manner.

**ARTICLE 6  
SITE CONDITIONS**

**6.1 Site Investigation.** Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;

- c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. The visible conformation and conditions of the ground; and
- e. The character of equipment and facilities needed preliminary to and during work performance.

**6.2 Surface and Subsurface Investigation.** Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract. Owner will provide to Job Order Contractor all subsurface investigation reports it has commissioned, and has knowledge of, that reasonably reflect expected conditions at the location of the Job Order.

**6.3 Differing Site Conditions.** Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:

- a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
- b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**6.4 Owner Investigation.** Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

**6.5 Written Notice of Differing Site Conditions.** No request by Job Order Contractor for an equitable adjustment to a Job Order under this Article shall be allowed, unless Job Order Contractor has given the written notice required.

**6.6 Payment Adjustment.** No request by Job Order Contractor for an equitable adjustment to a Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

## ARTICLE 7 JOB ORDER SCHEDULES

**7.1 Construction Schedule.** If required, the Job Order Contractor will submit for approval with the signed Job Order a practicable schedule showing the sequence in which Job Order Contractor proposes to perform the Work, and the dates on which Job Order Contractor

contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case, the basic information should be the same and the schedule or chart must contain as a minimum:

- a. A detailed list of work activities or work elements.
- b. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin.
- c. Show early start and early finish dates along with late start and late finish dates for each work activity or work element.

**7.1.1** If the Job Order Contractor fails to submit a schedule with the Job Order, Owner may withhold approval of progress payments until Job Order Contractor submits the required schedule.

**7.2 Failure to Submit Schedule.** Failure of Job Order Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Job Order Contractor's right to proceed with the Work if not cured within seven (7) days after written notice is provided, or any separable part of it, in accordance with Article 14.

**7.3 Progress Report.** Job Order Contractor shall submit a progress report every thirty (30) days, or as directed by Owner, and upon doing so shall immediately deliver a current schedule to Owner if it has materially changed since the last submission of a schedule. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Without additional cost to Owner, Owner may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.

**7.4 Emergency Work.** Job Order Contractor will give top priority to any emergency Work Owner may have and will allocate all resources necessary to accomplish such Work in accordance with Owner's schedule requirements. To the extent the Job Order Contractor incurs additional cost, expense or schedule delay in performing Owner's emergency Work, Owner will equitably adjust the Contract in accordance with Article 10.

## **ARTICLE 8 INSPECTION OF CONSTRUCTION AND ACCEPTANCE**

**8.1 Contractor Inspection System.** Job Order Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Job Order Contractor shall maintain complete inspection records and make them available to Owner. All work shall be conducted under the general direction of Owner and is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

**8.2 Owner Inspections and Tests.** Owner inspections and tests are for the sole benefit of Owner and do not:

- a. Relieve Job Order Contractor of responsibility for providing adequate quality control measures;
- b. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance;
- c. Constitute or imply acceptance; or
- d. Affect the continuing rights of Owner after acceptance of the complete work after Substantial Completion.

**8.3 Contractor Responsibilities.** The presence or absence of an inspector does not relieve Job Order Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.

**8.4 Contractor Performance.** Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

**8.5 Contractor Corrective Work.** Job Order Contractor shall, without charge, replace or correct Work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises.

**8.6 Failure to Replace or Correct Work.** If Job Order Contractor does not promptly replace or correct rejected Work, Owner may:

- a. By Contract or otherwise, replace or correct the Work and charge the cost to Job Order Contractor; or
- b. Terminate for default Job Order Contractor's right to proceed.

**8.7 Owner Inspection before Acceptance.** If, before acceptance of the entire Work, Owner decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

**8.8 Owner Acceptance.** Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work that the Owner determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

**ARTICLE 9  
INVOICING AND PAYMENT**

**9.1 Compensation.** As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract, Owner shall pay Job Order Contractor the amounts specified in the individual Job Orders.

**9.2 Invoices.** Job Order Contractor shall submit invoices to the following address:

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

**9.3 Progress Payments.** Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates of Work completed submitted by the Job Order Contractor and approved by Owner. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

**9.4 Retention.** In the processing of progress payments, Owner may retain five percent (5%) of the estimated amount until final completion and acceptance of all Work performed under the Job Order. Retention applicable to each Job Order shall be released within thirty (30) days after final completion of the Job Order and acceptance of the Work under the Job Order. However, if

Owner finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Owner may authorize payment to be made in full, without retention.

**9.5 Owner's Property.** All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:

- a. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- b. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.

**9.6 Approval and Certification.** An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Owner or Owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this contract. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the Work.

**9.7 Unpaid Amounts.** Owner shall pay all unpaid amounts due Job Order Contractor under this Contract within thirty (30) days, after:

- a. Completion and acceptance of the Work;
- b. Presentation of a properly executed invoice;
- c. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Job Order Contractor's claim to amounts payable under this Contract has been assigned. Job Order Contractor shall complete a Contractor's release form acceptable to Owner; or
- d. Consent of Job Order Contractor's surety, if any.

## **ARTICLE 10 CHANGES**

**10.1 Owner Changes.** Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:

- a. In the specifications (including drawings and designs);
- b. In Owner-furnished facilities, equipment, materials, services, or site; or
- c. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

**10.2 Owner Change Orders.** Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Owner that causes a change shall be treated as a change order under this Article; provided, that Job Order Contractor gives Owner timely written notice stating the date, circumstances, and source of the order and that Job Order Contractor regards the order as a change order.

**10.3 Contract Adjustments.** Except as provided in this Article, no order, statement, or conduct of Owner shall be treated as a change under this Article or entitle Job Order Contractor to an equitable adjustment hereunder.

**10.4 Modification of the Job Order.** If any change under this Article causes an increase or decrease in Job Order Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Owner shall negotiate an equitable adjustment and modify the Job Order in writing.

**10.5 Contractor Proposal.** Job Order Contractor must submit any proposal under this Article within thirty (30) calendar days after:

- a. Receipt of a written change order under Paragraph 10.1 above or;
- b. The furnishing of a written notice under Paragraph 10.2 above, by submitting to Owner a written statement describing the general nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under Paragraph 10.2 above.

**10.6 Final Payment Limitation.** No proposal by Job Order Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

**10.7 Contractor Extension Justification.** Job Order Contractor shall furnish to the Owner a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

**10.8 Contractor Price Breakdown Structure.** Job Order Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by

Owner. Pricing for such changes shall be based on quantities mutually agreed to by Job Order Contractor and Owner and the rates contained in the Unit Price Book, modified by the appropriate city cost index, as adjusted by the applicable coefficient(s).

## **ARTICLE 11 INSURANCE & BONDS**

**11.1 Contractor Insurance.** Job Order Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Job Order Contractor and Owner from claims which may arise out of or result from Job Order Contractor's operations whether such operations are performed by Job Order Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

- a. **WORKERS' COMPENSATION INSURANCE** providing statutory benefits in accordance with the laws of the State of \_\_\_\_\_ or any Federal statutes as may be applicable to the Work being performed under this Contract.

**EMPLOYER'S LIABILITY INSURANCE** with limits of liability not less than:

\$1,000,000	Each Accident
\$1,000,000	Each Employee for Disease
\$1,000,000	Policy Limit for Disease

- b. **COMMERCIAL GENERAL LIABILITY INSURANCE** including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Each Occurrence

- c. **AUTOMOBILE LIABILITY INSURANCE** covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Contract with limits of liability not less than:

\$1,000,000	Each Person for Bodily Injury
\$1,000,000	Each Accident for Bodily Injury
\$1,000,000	Each Occurrence for Property Damage

**11.2 Owner as Additional Insured.** The policies providing Commercial General Liability and Automobile Liability insurance as required in Paragraph 11.1 shall be endorsed to name

Owner as Additional Insured. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.

**11.3 Policy Endorsement.** All policies providing Job Order Contractor's insurance as required in Paragraph 11.1 above shall be endorsed to provide the following:

- a. Thirty days written notice of cancellation or non-renewal given to Owner at the address designated in Paragraph 16.2.
- b. Waiver of subrogation in favor of Owner.

**11.4 Limits of Liability.** The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

**11.5 Certificate of Insurance.** Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this agreement. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies).

**11.6 Subcontractor Insurance.** Job Order Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Job Order Contractor shall deem appropriate and adequate for the Work being performed. Job Order Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

**11.7 Bonds.** If required by Owner, Job Order Contractor shall furnish Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work, in a penal sum equal to the aggregate price of all Job Orders issued to the Job Order Contractor, but not less than \$ \_\_\_\_\_. The Performance and Payment Bonds must be submitted to Owner within ten (10) calendar days after issuance of a Job Order.

**11.8 Notice to Proceed.** The Contract Notice to Proceed will not be issued until properly executed bonds are received and accepted by Owner. A separate Notice to proceed will be issued for each Job Order.

**11.9 Contractor Reimbursement.** If bonds are required, Owner shall reimburse Job Order Contractor the premium cost after submission of proof of premium payment.

**11.10 Increases in Bond Amount.** If required by Owner, increases in the penal sum of the bonds will be provided promptly by Job Order Contractor.

## **ARTICLE 12 INDEMNIFICATION**

**12.1** Job Order Contractor agrees to indemnify and hold harmless the Owner, its officers, agents and employees, and any jurisdiction or agency issuing permits for any Work, its officers, agents and employees, from all suits, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work done in fulfillment of a Job Order issued under this Contract or on account of any act, claim or amount arising or recovered under Workmen's Compensation Law or arising out of the failure of the Job Order Contractor to conform to any statutes, ordinances, regulation, law or court decree.

**ARTICLE 13  
DISPUTES**

**13.1 Party Cooperation.** The parties are fully committed to working with each other throughout the term of the Contract 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, Job Order Contractor and Owner 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.

**13.2 Field Level Resolution.** Job Order Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein.

**13.3 Contractor Performance.** The Job Order Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties.

**13.4 Partnering.** The Owner and Job Order Contractor will share in the expense of an initial facilitated partnering workshop, followed up by periodic refresher meetings at mutually agreed times. The goal of the workshop will be to identify common goals, common interests, lines of communication, and a commitment to cooperative problem solving.

**13.5 Owner's Representative.** Owner designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**13.6 Contractor's Representative.** Job Order Contractor designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and

resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

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**13.7 Owner's Resolution.** Any dispute which is not disposed of by agreement will be decided by the Owner, who will reduce its decision to writing and mail or otherwise furnish a copy thereof to the Job Order Contractor. Any dispute not finally resolved under this Article may be brought before the state courts of the State of \_\_\_\_\_ and adjudicated in accordance with the laws of \_\_\_\_\_.

**ARTICLE 14  
TERMINATION AND DEFAULT**

**14.1 Termination for Convenience.** Owner may terminate performance of the Work under this Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.

**14.2 Notice of Termination.** After receipt of a Notice of Termination, and except as directed by Owner, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- a. Stop work as specified in the notice;
- b. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete any Work not terminated;
- c. Assign to Owner, if directed by Owner, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Article;
- d. As directed by Owner, transfer title and deliver to Owner:

- i. The fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced or acquired for the Work terminated;
  - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;
- e. Complete performance of the Work not terminated;
- f. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Job Order Contractor and in which Owner has or may acquire an interest; and
- g. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in Paragraph 14.2(c) above; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.

**14.3 Final Termination Settlement Proposal.** After termination, Job Order Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Job Order Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

**14.4 Owner Payment.** Job Order Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount will include a reasonable allowance for profit on work done. The Contract shall be amended, and Job Order Contractor paid the agreed amount.

**14.4.1** If Job Order Contractor and Owner fail to agree on the whole amount to be paid Job Order Contractor because of the termination of work, Owner shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 14.4 above:

- a. For Work performed before the effective date of termination, the total (without duplication of any items) of:
  - i. The cost of this Work;
  - ii. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and

- iii. A markup, including overhead and profit, on (i) above as is determined for pricing changes.
- b. The reasonable costs of settlement of the Work terminated, including:
  - i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

**14.5 Destroyed, Lost, Stolen or Damaged Property.** Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Job Order Contractor under Subparagraph 14.4.1 above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.

**14.6 Amount Due Job Order Contractor.** In arriving at the amount due Job Order Contractor under this Article, there shall be deducted:

- a. All unliquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;
- b. Any claim which Owner has against Job Order Contractor under the Contract; and
- c. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this Article and not recovered by or credited to Owner.

**14.7 Partial Termination.** If the termination is partial, Job Order Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of any Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of any Job Order, if Owner believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.

**14.8 Excess Payments.** If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Owner upon demand.

**14.9 Contractor Records.** Unless otherwise provided in this Contract or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Owner, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**14.10 Default.** If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Owner may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon thirty (30) days written notice to the Job Order Contractor. In this event, Owner may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

**14.11 Contractor's Right to Proceed.** Job Order Contractor's right to proceed shall not be terminated under this Article, if:

- a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Job Order Contractor. Examples of such causes include:
  - i. acts of God or of the public enemy,
  - ii. acts of Owner in its Contractual capacity,
  - iii. acts of another Contractor in the performance of a Contract with Owner,
  - iv. fires,
  - v. floods,
  - vi. epidemics,
  - vii. quarantine restrictions,
  - viii. strikes,
  - ix. freight embargoes,
  - x. unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or

xi. delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the subcontractors or suppliers; and

b. Job Order Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal and review under Article 13.

**14.12 Owner's Right to Terminate.** The rights and remedies of Owner in this Article are in addition to any other rights and remedies provided by law or under this Contract.

**14.13 Owner and Contractor Rights.** If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.

## **ARTICLE 15 WARRANTY OF CONSTRUCTION**

**15.1 Applicable Warranties.** In addition to any other warranties in any Job Orders, Job Order Contractor warrants, except as provided in Paragraph 15.10, that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Job Order Contractor or any of its subcontractors or suppliers at any tier.

**15.2 Warranty Duration.** This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Owner takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

**15.3 Contractor Corrective Work.** Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Owner's real or personal property, when that damage is the result of:

- a. Job Order Contractor's failure to conform to requirements; or
- b. Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.

**15.4 Contractor Restoration.** Job Order Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. Job Order Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

**15.5 Owner Notification.** Owner shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

**15.6 Failure to Correct Work.** If Job Order Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Job Order Contractor's expense.

**15.7 Subcontractor and Supplier Warranties.** With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:

- a. Obtain all warranties required by the Job Order;
- b. Require all warranties to be executed, in writing, for the benefit of Owner; and
- c. Enforce all warranties for the benefit of Owner.

**15.8 Owner Remedy.** In the event Job Order Contractor's warranty under Paragraph 15.2 of this Article has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

**15.9 Owner Furnished Material or Design.** Unless a defect is caused by the negligence of Job Order Contractor or subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage that results from any defect in Owner-furnished material or design.

**15.10 Pre-Existing Work.** Job Order Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.

**15.11 Owner's Rights.** This warranty shall not limit Owner's rights under Article 8 of this Contract with respect to latent defects, gross mistakes, or fraud.

## **ARTICLE 16 MISCELLANEOUS**

**16.1 Contract Order of Precedence.** In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. Contract Modifications, if any;
- b. The Contract Articles including Attachments;

- c. Job Orders;
- d. Drawings; and
- e. Specifications.

**16.2 Notices.** All notices to either party by the other shall be delivered personally or sent by first class United States mail, registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each party:

Owner	Job Order Contractor
_____	_____
_____	_____
_____	_____

**16.2.1** Shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.

**16.3 Severability.** If any provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

**16.4 Waivers.**

**16.4.1** Neither Owner's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and Job Order Contractor shall be and remain liable to Owner in accordance with applicable law and the terms of this Contract for all damages to Owner caused by Job Order Contractor's negligent act, error or omission in the performance of any of the Work.

**16.4.2** The waiver by Owner of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

**16.5 Merger.** This Contract and all procurement documents incorporated by reference set forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations.

The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Work, including an action in tort.

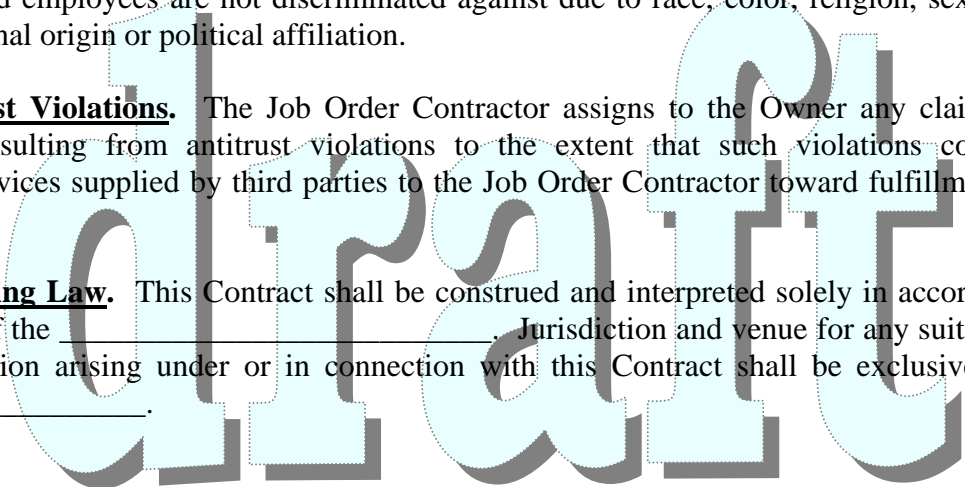
**16.6 Non-Availability of Funds.** Every payment obligation of the Owner under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Owner at the end of the period for which funds are available.

**16.7 Audit of Records.** Pursuant to applicable laws, the Job Order Contractor shall retain and shall contractually require each subcontractor to retain all data, books, and other records (“records”) relating to this Contract for a period of three years after completion of this Contract. All records shall be subject to inspection and audit by the Owner at reasonable times. Upon request, the Job Order Contractor shall produce the original of any or all such records. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**16.8. Non-Discrimination.** The Job Order Contractor shall comply with all laws mandating that all persons, regardless of race, color, religion, sex, age, national origin, disability or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulation, including the Americans With Disabilities Act. The Job Order Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, color, religion, sex, age, disability, national origin or political affiliation.

**16.9 Antitrust Violations.** The Job Order Contractor assigns to the Owner any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Job Order Contractor toward fulfillment of this Contract.

**16.10 Governing Law.** This Contract shall be construed and interpreted solely in accordance with the laws of the \_\_\_\_\_ . Jurisdiction and venue for any suit, right or cause of action arising under or in connection with this Contract shall be exclusively in \_\_\_\_\_ .



**IN TESTIMONY OF WHICH**, this instrument has been executed by and on behalf of the Job Order Contractor on the \_\_\_\_ day of \_\_\_\_\_, 200\_, and has been executed by and on behalf of Owner the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**JOB ORDER CONTRACTOR**

**OWNER**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

**draft**

**ATTACHMENT "A"**  
**CONTRACT PRICING COEFFICIENTS**

1.0 Job Order Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, insurance, taxes, overhead and profit to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Job Orders.

2.0 Coefficients.

2.1 Coefficient for Standard Hours: X.XXX

2.2 Coefficient for Non-Standard Hours: X.XXX

3.0 Pricing the Work.

3.1 The actual pricing for work performed under the Contract will be based on the mutually agreed quantities applied to the specified rates contained in the Unit Price Book, modified by adjustment factors and indices as specified and multiplied by the appropriate coefficient as set forth above.

3.2 Excluded Sections of the Unit Price Book. Sections of the Unit Price Book addressing the areas below are not allowable for use and inclusion when pricing proposals: (modify as necessary to best fit your needs and Unit Price Book)

Construction Management Fees  
Contingencies  
Overtime thru Taxes  
Performance Bond thru Scheduling  
Office thru Field Office Expense  
Small Tools  
Commissioning

4.0 Hours of Work.

4.1 Standard hours of work will be from 7:00 AM to 4:00 PM, Monday through Friday, unless alternate standard hours are agreed to and adopted.

4.2 Non-standard hours are hours required by Owner to be worked before 7:00 AM and after 4:00 PM (unless alternate standard hours are agreed and adopted), Monday thru Friday, and all hours worked on Saturdays, Sundays and holidays will be considered non-standard hours.

4.3 Non-standard hours worked by Job Order Contractor to regain schedule or for Job Order Contractor's convenience shall not be entitled to application of the Coefficient for Non-standard hours.

## **ATTACHMENT "B" SCOPE OF SERVICES**

### 1.0 GENERAL INFORMATION

This is a fixed unit price, indefinite quantity type Contract for the performance of a broad range of construction, repair and maintenance work on an as-needed basis as may be required by Owner. The specific work requirements will be identified in Job Orders to be issued by Owner.

### 2.0 DOCUMENTS

2.1 The currently applicable Unit Price Book contains pricing information for the Work to be accomplished in the unit of measure specified. The Unit Price Book will be updated effective upon receipt by Job Order Contractor of any periodic updating. Previously issued Job Orders and Changes will not be retroactively repriced although any Changes priced after receipt of an update will be priced by the updated version of the Unit Price Book.

2.2 The construction specifications in effect at Contract signing, and provided to the Job Order Contractor, shall be the specifications under this Contract.

### 3.0 WORK AUTHORIZATION

Any Work required under this Contract shall be authorized by issuance of formal, written Job Orders, as follows:

3.1 As the need exists (as determined by Owner) for performance under the terms of this Contract, Owner will notify Job Order Contractor of an existing requirement.

3.2 Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed, by:

3.2.1 Visiting the proposed site in the company of Owner, or;

3.2.2 Establishing contact with Owner to further define the scope of the requirement.

3.3 After mutual agreement on the scope of the individual requirement, Job Order Contractor shall then prepare a proposal for accomplishment of the task unless Job Order Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, Job Order Contractor will so notify Owner in a timely manner.

3.4 The Unit Price Book shall serve as the basis for establishing the value of the Work to be performed.

3.5 Job Order Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.

3.6 Upon receipt of Job Order Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.

3.7 In the event Owner does not issue a Job Order after receipt of Job Order Contractor's proposal, Owner is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal, except as noted in Article 4.8.

#### 4.0 SCHEDULING OF WORK

4.1 For each Job Order, Owner will issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Job Order Contractor. Job Order Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Job Order Contractor considers the Work complete and ready for its intended use, Job Order Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be substantially complete, Owner will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Job Order. Job Order Contractor shall proceed promptly to complete and correct items on the list.

4.2 Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.

4.3 Furniture and portable office equipment in the immediate work area will be moved by Job Order Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Job Order Contractor for any such transportation and storage costs incurred.

4.4 Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Job Order Contractor at no cost to Owner.

4.5 Job Order Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for approval.

#### 5.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

Job Order Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's inspectors.

## 6.0 DESIGN

Job Order Contractor's duties under the Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner, with reimbursement included as part of the Job Order Contractor's proposal.

## 7.0 OWNER-FURNISHED UTILITIES

Owner shall provide at no cost to Job Order Contractor utilities and toilet facilities that are existing and available at each site for Work performed under the Contract. If utilities and/or toilet facilities are not existing and available, an equitable price will be negotiated and included in the Job Order to compensate Job Order Contractor for providing such items.

### 7.1 Water:

Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, a supply of water necessary for the performance of work under this Contract. Owner will in no case furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner water supply source is adequate for the needs of the Contract.

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal, so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

### 7.2 Electricity:

Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal. All work in connection therewith shall be coordinated, scheduled and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal, so as to leave the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

#### 8.0 WORK BY OWNER

Owner reserves the right to undertake or award Contracts for the performance of the same or similar type work contemplated herein, and to do so will not breach or otherwise violate the Contract.

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