



NESBITT CONTRACTING CO., INC.

JOB ORDER MASTER CONTRACT

CONTRACT NO.

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JOB ORDER MASTER CONTRACT

This Job Order Master Contract ("Contract") is entered into and effective between City of Glendale, an Arizona municipal corporation ("City") and Nesbitt Contracting Co., Inc., an Arizona corporation, ("Contractor") as of the day of , 2024 ("Effective Date").

CITY and CONTRACTOR agree as follows:

Article I. PARTICIPANTS AND JOB ORDER CONTRACTING AGREEMENT

Section 1.01 PARTIES

CITY: City of Glendale
Project Manager: John Murphey
Address: 5850 W. Glendale Ave., Glendale, AZ 85301
Telephone: (623) 930-2659
E-mail: jmurphey@glendaleaz.com

CONTRACTOR: Nesbitt Contracting Co., Inc.
Project Manager: Joe Chavez
Address: 100 S. Price Rd., Tempe AZ 85288
Arizona ROC No.: 074063A
Telephone: 480-423-7647
E-mail: jchavez@nesbitts.com

(Prior to execution of the Contract, Contractor must provide to City's Engineering Department its Contractor's License Classification and current job appropriate insurance certificate.)

Section 1.02 OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

- (a) This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Construction services within the scope of this Contract as City may request from time to time by issuance of an individual Job Order for each Project. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple Projects and therefore multiple Job Orders under this Contract.
- (b) The amount to be paid by the City for the Project under each Job Order is the Contract Price for the Job Order. The Contract price includes the Contract price for the Work. The Contract Price for any Job Order may be either a Fixed Price or a Guaranteed Maximum Price (GMP), subject to the following.

- (c) The Contract Price for each Job Order shall not exceed \$2,000,000.00, including any Change Orders.
- (d) The cumulative sum of the Job Orders performed by Contractor during the term of the agreement shall not exceed \$5,000,000.00.
- (e) There is no limit nor minimum on the number of Job Orders that City may issue to Contractor during any twelve (12) month term of this Contract or during the entire period this Contract is in effect.
- (f) Contractor may refuse any Job Order under this Contract.
- (g) This Contract does not obligate or require City to offer any Job Order Agreement to Contractor, no Contract in relation to any specific Work being entered into until a Job Order Agreement therefore has been fully executed by City and Contractor which shall enable work to begin.

Section 1.03 SCOPE OF WORK UNDER THIS JOC CONTRACT

This Contract is for a broad range of maintenance, repair and construction work on real property, or within the public right-of-way. The scope of this Contract will be to provide construction services for a broad range of City pavement management projects such as but not limited to the following:

1. Constructing ADA accessible features including: ramps, warning features, way-making features, and other improvements to meet ADA requirements.
2. Crack seal (all types)
3. Asphalt Patching (all types)
4. AC pavement Rejuvenators (polymer modified rejuvenating emulsion)
5. Sealcoats (PMM, LiquidRoad, Onyx, Guardtop etc.)
6. Slurry seals (all types)
7. FAST (all types e.g., high vol & low vol)
8. Thin Overlays (hot applied, all types)
9. Asphalt Milling
10. HMA (for overlays, new construction, etc.)
11. Obtain all necessary permits required to complete the job order, including but not limited to; SWPPP, dust control, traffic control plans, etc.
12. Conduct project meetings as necessary to maintain the project budget and schedule, set agendas, and prepare and distribute meeting minutes.
13. Subgrade preparation including compacting native soil, placing and compacting sub-grade materials, and grading.
14. Coordinating with utility companies and/or the City to replace, relocate, remove, or install street light systems, traffic signal poles, mast arms, control equipment, traffic signal equipment, loop detectors and detection equipment.
15. Utility Locating (potholing) underground utilities and obstructions.

16. Micro seals (all types)
17. Scrub Seals (all types)
18. Fog seals (all types)
19. Misc. AC emulsions
20. Crack mastic (all types)
21. Thermally Bonded AC Joint
22. Stress Absorbing Membrane Interlayer (SAMI) type materials
23. Hot in place AC recycling
24. Cold in place AC recycling
25. Minor Bridge Repair and Maintenance
26. Placing/relocating conduit and boxes and be able to place vaults, hand holes and pull boxes.
27. Installation and possible removal of concrete pavements including curb and gutter, driveways, roadways, ramps, sidewalks, culverts, boxes, and hard-scape features, walls, abutments, retaining walls, brick pavers and landscape features.
28. Drainage features including scuppers, gutters, valley gutters, drains, pipes, basins, lined and unlined swales and channels, dry-wells, catch basins and culverts/headwalls.
29. Striping and signing including, design of plans and specifications, providing and installing project signs, and installing striping, symbols, raised pavement markers and signage
30. Preparing traffic control plans, providing traffic set-up in accordance with the approved traffic control plans and barricading work areas.
31. Earthwork: site rough and finish grading.
32. Stamped, painted and thermoplastic decorative asphalt.
33. Bikeways, multi-use paths: concrete, asphalt, granite, natural materials.
34. Minor wet and/or dry utility installation, relocation, and adjustments.
35. Minor landscaping, irrigation systems and controls.
36. Location and site survey.

Article II. CONTRACT DOCUMENTS

Section 2.01 CONTRACT DOCUMENTS

- (a) The Contract between City and Contractor shall consist of the following Contract Documents:
 - (i) This Contract (including Exhibits thereto):
 - (ii) Supplemental General Conditions
[Design and Construction Documents and Forms - City of Glendale \(glendaleaz.com\)](http://glendaleaz.com)
 - (iii) For each individual Project, the Job Order therefore, including the Exhibits thereto:

- 1) Standard Job Order Agreement Form
- 2) Scope of Work
- 3) Unique Insurance and/or Bond Requirements (if any);
- 4) Unique Government Provisions Compliance (if any).

(b) Conflicts. In the event of conflicts in terms between a specific Job Order, this Contract and/or the Supplemental General Conditions or appendix thereto, the specific Job Order Agreement, and then this Contract shall control.

Section 2.02 DEFINITIONS

The definitions in Section 2 of the Supplemental General Conditions apply to all the Contract Documents, including this Job Order Master Contract. Additional definitions or defined terms applicable to all the Contract Documents for a specific Project, if any, will be included in each Job Order Agreement.

Section 2.03 JOB ORDER PROCESS

- (a) When the City identifies the need for performance from a Job Order Contract, the City will issue an individual Job Order proposal request to Contractor.
- (b) Within seven (7) business days of receipt of this request, the Contractor shall arrange to visit the site with the City designated representatives and arrange with the City to further scope the project.
- (c) Contractor shall respond within ten (10) business days of the Job Order proposal request or site visit, whichever is later or as otherwise indicated on a case-by-case basis, by submitting Contractor's Job Order Proposal to the City representative.
- (d) The City and Contractor shall enter negotiations for scope and price. Should City and Contractor fail to reach agreement during the negotiation period, the City will cancel the negotiations and request a proposal from another Job Order Contractor or solicit construction services via another means. The City agrees not to use the proposal as a bargaining tool (i.e. "bid shop") with other vendors.
- (e) Upon agreement, the City will draft a Job Order Agreement. Each Job Order shall be in the form attached as Exhibit A hereto and shall not be effective or binding until fully executed by all parties.

Section 2.04 JOB ORDER PROPOSAL

- (a) Contractor will not be reimbursed for any Pre-Job Order costs, including proposal preparation, attendance during negotiations, or site visits.

- (b) Unless otherwise required under the terms of the Job Order proposal request, Contractor's Job Order proposal shall include the following:
 - (i) Contractor's Price Proposal in PDF and electronic format (as directed by the City);
 - (ii) A project schedule and schedule of values that reflects the costs of each work element on the schedule. The schedule must show all milestones (e.g. permits, submittals, ordering materials, demolition, work phases, closeout, and completion date, 2-year warranty affirmation);
 - (iii) Necessary documentation will be required to indicate that adequate scoping, layout, setup and planning to accomplish the work has been done.
- (c) The City may require either a unit cost proposal or a lump sum Job Order proposal. Should the lump sum proposal methodology be accepted, the City and Contractor agree that the schedule of values is provided to demonstrate proper understanding of the project and that individual lines/items will not be added at the end of the Job Order.
- (d) Direct job costs shall be based upon firm price quotes for Subcontractors on Contractors approved Subcontractor lists. To the extent possible, Contractor shall obtain firm price quotes from three (3) subcontractors for each discipline applicable to the project. Should the Contractor self-perform the work, quotes are not required.
- (e) The City may reject any Subcontractor without cause. Contractor shall use the City of Glendale Subcontractor listing form.

Section 2.05 ISSUANCE OF JOB ORDER AGREEMENTS ("JOA")

- (a) Upon award of a Job Order, a signed copy of the Job Order will be electronically forwarded to Contractor. Failure by Contractor receive the electronic orders shall not relieve Contractor from the obligation to complete the Work under the Job Order in accordance with the Job Order.
- (b) The Project duration starts with the date on the Notice to Proceed.

Article III. PRE-CONSTRUCTION SERVICES

Section 3.01 PRE-CONSTRUCTION SERVICES

- (a) Costs for Pre-Construction Services are included in Contractor's overhead Job Orders unless additional Pre-Construction Services are requested and contracted as a separate Job Order for specific Work as requested and approved by the City.

Article IV. CONSTRUCTION SERVICES

Section 4.01 GENERAL

- (a) Contractor agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the Project Schedule.
- (b) Contractor shall provide quality control for all work under this contract. Quality control is considered part of the required work in each job order and separate payment shall not be made for this effort.
- (c) At all times relevant to this Contract and performance of the Work, Contractor shall fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project and the Contract, including, without limitation, those set forth in the Exhibits to this Contract and each Job Order Agreement.

Section 4.02 CONTRACTOR'S PRE-CONTRACT AND PRE-WORK DELIVERABLES

- (a) The Contractor will provide the Deliverables in accordance with the Supplemental General Conditions.
- (b) Any additional items which Contractor must deliver to City prior to commencing the Work in the Job Order, if any, shall be set forth in the Job Order Agreement.

Section 4.03 PRE-CONSTRUCTION CONFERENCE

- (a) Contractor shall attend the Pre-Construction Conference in accordance with Section 26 of the Supplemental General Conditions. Other Pre-Construction Conference requirements for a specific Job Order shall be set forth in each Job Order Agreement.
- (b) The City shall issue a notice to proceed at the pre-construction conference, however, this may be waived if determined to be in the City's best interest.

Article V. CITY RESPONSIBILITIES

- (a) City shall have the responsibility, and provide, where possible, as-built documents of existing facilities and site plan information.
- (b) Additional services to be provided or responsibilities assumed, by City, if any, shall be listed in the Job Order Agreement.
- (c) Additional information to be provided by City, if any, shall be listed in the Job Order Agreement.

Article VI. CONTRACT TIME

Section 6.01 CONTRACT TERM

The Contract expiration date is December 31, 2025, with no renewal options.

Section 6.02 CONTRACT TIME FOR SPECIFIC JOB ORDERS

- (a) The Contract Time for each Job Order shall start with date listed on the Notice to Proceed and end with a Letter of Acceptance (LOA), as set forth in Section 6.5 below. The Notice to Proceed will not be issued until prior approval and acceptance by City of the Job Order.
- (b) The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through Final Acceptance (Letter of Acceptance) within the Contract Time.
- (c) Time is of the Essence of this Contract, and each Job Order issued hereunder, for each Project.
- (d) Failure to the part of Contractor to adhere to the approved Project Schedule will be considered for cause to receive no additional Job Orders and / or any contract extensions.

Section 6.03 PROJECT SCHEDULE

The Project Schedule shall be updated and maintained throughout Contractor's performance under a Job Order in accordance with Section 28 of the Supplemental General Conditions.

- (a) For job orders in excess of forty-five (45) days in duration, Contractor shall submit a Critical Path Method (CPM) schedule using Microsoft Project or equivalent software acceptable to the City.

Section 6.04 SUBSTANTIAL COMPLETION

Substantial Completion shall be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion shall be determined in accordance with Paragraph 31.3 of the Supplemental General Conditions.

- (a) Failure to complete Job Orders within the Job Order time may result in the City issuing no additional requests for Job Order proposals.
- (b) Paragraphs 31.1 and 31.2 of the Supplemental General Conditions regarding liquidated damages do not apply to Job Order Agreements.

Section 6.05 FINAL ACCEPTANCE

- (a) Final Acceptance will be obtained within the time period set forth in the Project Schedule.
- (b) Final Acceptance will be issued pursuant to Paragraphs 31.4 and 32 of the Supplemental General Conditions.

Section 6.06 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY

- (a) Contractor and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:
 - (i) Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - (ii) Damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- (b) This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Contract.
- (c) Nothing herein shall be deemed to constitute a waiver of any other remedy available to City in the event of Contractor's default under this Contract prior to full performance of the Work including, as applicable, specific performance or completion of the Work on behalf of Contractor, the cost and expense of which shall be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by Contractor.

Article VII. CONTRACT PRICE

Section 7.01 CONTRACT PRICE

- (a) In exchange for Contractor's full, timely, and acceptable performance and construction of the Work under a specific Job Order, and subject to all the terms of this Contract, City will pay Contractor the Contract price, agreed to in each Job Order.
- (b) The Contract Price for each Job Order is all inclusive and specifically includes all fees, costs, overhead, profit, insurance and bond premiums, and taxes of any type necessary to fully, properly and timely perform and construct the Work.

Section 7.02 COSTS

- (a) For any portion of the Work which, either through this Contract, specific Job Order, Change Order or otherwise, is performed and paid for on a cost, or time and materials basis, the costs which may be reimbursed to Contractor and/or chargeable against the Contract price shall be determined as set forth in Section 32 of the Supplemental General Conditions.

Article VIII. PAYMENT

- (a) If the Work under a specific Job Order is to be completed in less than forty-five (45), Contractor shall submit a single invoice, and payment thereon shall be made in a single lump sum payment, to the extent payment is actually and currently owed, in accordance with. A.R.S. § 34-609.
- (b) If the Work under a specific Job Order is to be completed in forty-five (45) days or more, payments shall be made to Contractor monthly and in accordance with Section 32 of the Supplemental General Conditions.

Article IX. CHANGES TO THE CONTRACT

Changes to the Contract and/or Job Orders may be made in mutual agreement by the Contractor and the City.

Article X. SUSPENSION AND TERMINATION

Section 10.01 FOR CONVENIENCE

- (a) City may terminate this Contract for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than fifteen (15) days following the date of delivery.
- (b) Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (c) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.

Section 10.02 FOR CAUSE

- (a) City may terminate this Contract for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (b) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
- (c) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Contract, whichever is greater.

Article XI. INSURANCE AND BONDS

- (a) Contractor shall provide insurance as provided on the Exhibits attached hereto, and such additional insurance as may be applicable under each Job Order Agreement. Contractor shall provide proof of such insurance and all required endorsements in forms acceptable to City prior to commencing any Work under this Contract.
- (b) Contractor shall provide performance and payment bonds to City, in accordance with A.R.S. § 34.610(A), to cover Job Orders issued under this Contract, for the full amount of each Job Order Agreement, however, this may be waived if determined to be in the City's best interest.
- (c) Failure to provide proof of insurance and the required endorsements (including a current insurance Certificate of Liability, Section 11.01), or the required bonds, in forms acceptable to City will be a material breach and grounds for termination for cause of this specific Job Order and/or this Contract.

Section 11.01 INSURANCE REQUIREMENTS

The City only accepts the most recent version of ACORD® Certificate of Liability Insurance form with additional insured endorsements. The Builder's Risk policy (if required) and the Owners and Contractors Protective Liability (OCP) policy shall remain in effect during construction through the date of project Final Acceptance. The remainder of the insurance policies shall remain in effect during construction and through the one-year warranty period that follows project Final Acceptance, unless otherwise specified in contract documents. Proof of all required coverage(s) shall be provided by the Contractor.

Commercial General Liability Policy forms must include:

- (a) Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions;

- (b) Products and Completed Operations coverage. Contractor agrees to maintain this coverage for a minimum of ten (10) years following completion of the Contractor Work and to continue to name City as an Additional Insured for the entire 10-year period;
- (c) Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted;
- (d) Broad Form Property Damage coverage, including completed operations or its equivalent;
- (e) An endorsement in a form acceptable to the City, naming City, any other party required to be named as an additional insured under the Contract Documents, and any other parties in interest as Additional Insured(s) under the coverage specified under Commercial General Liability. Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages IS NOT ACCEPTABLE;
- (f) An endorsement in a form acceptable to the City, stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and noncontributory except for any builder's risk property insurance coverage that may be purchased and maintained by City in connection with the Project, any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy;"
- (g) Coverage SHALL BE on an "Occurrence" form. "**Claims Made**" and "**Modified Occurrence**" forms are not acceptable;
- (h) Coverage to include general aggregate limits on a "per project" basis;
 - 1) Workers' Compensation (required for both Contractors):
 - a) Coverage A. Statutory Benefits Coverage B. Employer's Liability
 - b) Bodily Injury by accident: \$1,000,000 each accident
 - c) Bodily Injury by disease: \$1,000,000 policy limit
 - d) Bodily Injury by disease: \$1,000,000 each employee
 - 2) Commercial Auto Coverage (required for Contractors):
 - a) Auto Liability limits of not less than \$1,000,000 Combined Single Limit (Each Accident), combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto, All Owned, Scheduled, Hired, or Non-Owned."
 - 3) Commercial General Liability (required for both Contractors):

- a) Each Occurrence Limit: \$2,000,000
- b) Personal Injury/Advertising Injury Limit: \$1,000,000
- c) Products/Completed Operations Aggregate Limit: \$1,000,000
- d) General Aggregate Limit: \$2,000,000
(other than Products/Completed Operations)

4) Excess Liability:

Umbrella or Excess Liability may be used to satisfy the above Auto and General Liability coverage requirements and limits to reach a total combined limit of:

- Auto: Amount sufficient to cover difference in limits when compared to minimum coverage required.
- Each Occurrence: Amount sufficient to cover difference in limits when compared to minimum coverage required.
- Aggregate: Amount sufficient to cover difference in limits when compared to minimum coverage required.

5) Builders Risk (if required, will be required for Contractors only):

- a) Contractor shall include in its Cost Proposal the cost to obtain builders risk or "all risk" or equivalent policy form coverage in the amount of the initial Construction Costs (Hard Costs). This required insurance coverage is required on projects that are typically outside the public rights-of-way whereby the City is constructing or modifying a public building.
- b) The City may, at the City's sole option, purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial Construction Costs (Hard Costs), plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis.
- c) This insurance shall include interests of the City, Contractor and its subcontractors in the Project, and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements.

- d) City shall bear the responsibility for the deductible for such coverage when a loss affects the Work, provided, however, to the extent such loss is attributable to the negligent or wrongful acts or omissions of Contractor or someone for whom Contractor is responsible, Contractor shall bear the responsibility of the deductible. Such property insurance will not cover any tools or equipment owned or rented by Contractor that will not be incorporated into the Project, including trailers, excavators, scaffoldings, or forms. Contractor is responsible for providing insurance coverage for such items.
- 6) Owners and Contractors Liability Policy (OCP) (required for Contractors only):
- a) Owners and Contractors Liability Policy: Prior to the execution of the Contract the Contractor shall provide a separate policy of insurance in the amount of \$2,000,000, per occurrence, at its sole cost and expense, naming the City of Glendale, a Municipal Corporation and all its agents, representatives, officers, directors, officials and employees as the insured. The Policy shall be primary and not contributory to any insurance or self-insurance maintained by the City of Glendale and shall remain in effect through date of Final Acceptance.
- 7) Other Requirements:
- a) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
 - b) All policies must be written by insurance companies whose rating, in the most recent AM Best's Rating Guide, is not less than A-VII. All coverage forms must be acceptable to City.
 - c) ACORD® Certificate of Liability Insurance form with the required endorsements evidencing the required coverages must be PROVIDED to the City prior to commencement of any Work. Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. City shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by City.

- d) The policies shall provide waivers of subrogation by endorsement or otherwise in favor of the City. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay for the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- e) The following policies shall include Waiver of Subrogation endorsements:
 - i) Workers' Compensation
- f) The following policies shall include Additional Insured endorsements:
 - i) Commercial Auto Coverage
 - ii) Commercial General Liability
 - iii) Excess Liability
 - iv) Builders Risk, and as loss payee
- g) Contractor shall be responsible for satisfying any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents to be provided by Contractor.
- h) City reserves the right, in its sole discretion, to require higher limits of liability coverage if, in City's opinion, operations by or on behalf of Contractor create higher than normal hazards and, to require Contractor to name additional parties in interest to be Additional Insureds.
- i) In the event that rental of equipment is undertaken by Contractor or any Subcontractor to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
- j) In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to protection against theft, fire, vandalism and use by unauthorized persons.
- k) If City elects to utilize an Owner Controlled Insurance Program ("OCIP") which provides coverage for the Work, the Contractor shall comply with all provisions of any such OCIP.

- l) Any additional provisions specific to the Project are attached. In the event of any conflict between the attached terms and the terms of this Exhibit, Contractor shall comply with the more stringent provisions.

- m) If a policy does expire, a renewal certificate of the required coverage shall be sent to the City of Glendale not less than five (5) days prior to the expiration date or, if a policy is to be cancelled, changed or not renewed, a proper notice of such action shall be sent to the City not less than ten (10) days prior to any such action by the insurance company.

NOTICES SHALL BE SENT TO:

City of Glendale
Engineering Department
5850 W. Glendale Avenue
Glendale, AZ 85301

Article XII. INDEMNIFICATION

- (a) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Subcontractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

- (b) This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.

- (c) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

Article XIII. DISPUTE RESOLUTION

Section 13.01 DISPUTES

- (a) Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost effective manner.
- (b) Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement- including Disputes regarding any alleged breaches of this Agreement.
- (c) Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- (d) Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - (i) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - (ii) The parties' senior managers will meet within ten (10) business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - (iii) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

Section 13.02 ARBITRATION

- (a) Rules. If the parties are unable to resolve the Dispute by negotiation within thirty (30) days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - (i) The parties will exercise best efforts to select an arbitrator within five (5) business days after agreement for arbitration. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - (ii) The arbitrator selected must be an attorney with at least fifteen (15) years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- (b) Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- (c) Hearing. The arbitration hearing will be held within ninety (90) days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- (d) Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- (e) Final Decision. The Arbitrator's decision should be rendered within fifteen (15) days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- (f) Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

Section 13.03 SERVICES TO CONTINUE PENDING DISPUTE

- (a) Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

Section 13.04 EXCEPTIONS

- (a) Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, crossclaim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.
- (b) Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

- (c) Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

Article XIV. MISCELLANEOUS PROVISIONS

Section 14.01 MISCELLANEOUS PROVISIONS

- (a) The miscellaneous provisions set forth in Section 14 of the Supplemental General Conditions shall apply to the Contract.

Section 14.02 PERFORMANCE MEASUREMENT

- (a) Contractor's performance under each individual Job Order and this Contract shall be evaluated under the following measures:
 - (i) Quality of work performed
 - (ii) Conformance with contract and/or job order
 - (iii) Timely and complete communication
 - (iv) Safety record
- (b) Failure to maintain a good performance record may result in the City no longer requesting Job Order proposals or extending the term of the Contract.

Section 14.03 COOPERATIVE USE OF CONTRACT

- (a) This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: <http://www.mesaaz.gov/business/purchasing/save>.

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Article XV. SIGNATURE PAGE

The parties enter into this Agreement as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

Julie K. Bower (Seal)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Nesbitt Contracting Co., Inc.
an Arizona corporation



By: Joe Chavez
Its: President

Article XVI. EXHIBITS

Section 16.01 STANDARD JOB ORDER AGREEMENT FORM

Project Names: _____

Job Order Contract No.: _____

Project No.: _____

THIS JOB ORDER is made and entered into on the ___ day of ___, 20 __, by and between the City of Glendale, an Arizona municipal corporation (“City”) and the “Contractor” designated below. This Job Order is entered into pursuant to and incorporates herein the terms and provisions of the Job Order Master Contract. This Job Order, including all of the Contract Documents and Exhibits, shall be the Contract between the parties for the Work. City and Contractor agree as follows:

CITY: City of Glendale

Project Manager:

Telephone:

E-mail:

CONTRACTOR: (Name)

(Address)

Arizona ROC No.:

Contractor Representative:

Telephone:

E-mail:

PROJECT DESCRIPTION:

PROJECT SITE ADDRESS/LOCATION:

SCOPE OF WORK: Attached Exhibit A

JOB ORDER DURATION: ___ (Calendar Days)

JOB ORDER PRICE FOR WORK: Guaranteed Maximum Price/GMP of \$ _____.

SUBSTANTIAL COMPLETION: APPLIES DOES NOT APPLY

Substantial Completion shall be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion shall be determined in accordance with Section 6.3 of the General Conditions.

ADDITIONAL GOVERNMENT PROVISIONS: APPLIES AND IS ATTACHED DOES NOT APPLY

The parties hereto have executed this Job Order through their duly authorized representatives and bind their respective entities as of the effective date.

“CITY”

CITY OF GLENDALE

Signature _____

Name _____ Title _____

“CONTRACTOR”

COMPANY NAME

Signature _____

Name _____ Title _____