Chandler · Arizona Where Values Make The Difference	**PURCHASING ITEM FOR COUNCIL AGENDA Memo No. CA07-155**	**1. Agenda Item Number:** 24 **2. Council Meeting Date:** January 25, 2007
TO:	**MAYOR & COUNCIL**	**3. Date Prepared**: January 8, 2006
THROUGH:	**CITY MANAGER**	**4. Requesting Department**: Public Works

5. SUBJECT: Approve one-year Job Order Contracts (JOC) in an amount not to exceed $5,000,000 each, with the option of four one-year extensions, to Nesbitt Contracting Company, Inc., JOC07-11; Banicki Construction, JOC07-03; and Visus, Inc., JOC07-12.

6. RECOMMENDATION: Staff recommends that Council approve one-year Job Order Contracts (JOC) in an amount not to exceed $5,000,000 each, with the option of four one-year extensions, to Nesbitt Contracting Company, Inc., JOC07-11; Banicki Construction, JOC07-03; and Visus, Inc., JOC07-12.

7. BACKGROUND/DISCUSSION: The City has been utilizing the Job Order Contract delivery method since 2001. The most recent Job Order Contracts were awarded in 2004 and are currently in their third and final option year. Based on the success of these first general construction type contracts, City staff advertised for additional annual Job Order Contracts, including contracts specifically designed to address construction services related to roads, streets, transportation arterials, sidewalks, utilities located in transportation right-of-ways (ROW), and transportation related infrastructure improvements. This action awards three new Job Order Contracts for transportation related construction services.

Project Agreements establishing the cost, time and scope of work, will be executed when individual projects or Job Orders are issued. If the project cost exceeds $50,000, a Project Agreement will be submitted to Council for approval.

8. EVALUATION: The City's selection process was developed in accordance with state law for Job Order Contracting. Staff solicited and received statements of qualifications and experience from four interested contractors on November 1, 2006. Three qualified general contractors were selected for contract award after the solicitation.

The selection committee included the following members:

William Fay, P.E., Public Works Engineer
Joshua Plumb, Project Manager
Jeff Kramer, P.E., Assistant Public Works Director/Transportation and Operations
Jody Sims, Registered Contractor
Tom McLean, Resident

Staff recommends the selection of Nesbitt Contracting Company, Inc.; Banicki Construction; and Visus, Inc.

9. FINANCIAL IMPLICATIONS: Based on projected project needs, staff anticipates that as much as $5,000,000 per year will be expended per Job Order Contract (JOC). The owner/user department shall provide funding for each individual project requiring Job Order Contracting services.

10. PROPOSED MOTION: Move that Council approve one-year Job Order Contracts (JOC) in an amount not to exceed $5,000,000 each, with the option of four one-year extensions, to Nesbitt Contracting Company, Inc., JOC07-11; Banicki Construction, JOC07-03; and Visus, Inc., JOC07-12, and authorize the Mayor to sign the contract documents.

ATTACHMENTS: N/A

APPROVALS	
11. Requesting Department William Fay, Public Works Engineer	**13. Department Head** Daniel W. Cook, Acting Public Works Director
12. City Engineer Elizabeth M. Huning, Assistant Public Works Director/City Engineer	**14. City Manager** W. Mark Pentz

JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-12

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JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-12

This CONTRACT is made this day of , 2007, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **Visus Engineering Construction, Inc. a Corporation of the State of Arizona.** , (hereinafter referred to as "JOC").

CITY and JOC, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 The Contract Documents for each project shall include:

- This Job Order Contract,
- The JOC's Performance Bond and Payment Bond
- The City's Standard General Conditions for Construction Projects to the extent they do not conflict with this or the Project Agreement and are applicable to the project,
- Supplementary Conditions, if any,
- The Project Agreement for that job order,
- Work Change Directives or Change Orders, if any, and
- The project plans including project design and shop drawings for each project.

1.2. The following CITY standard forms are attached hereto and made a part hereof and shall be used as referenced herein:

A. Application for Payment
B. Certificate of Completion
C. Contractor's Affidavit of Settlement of Claims
D. Request for Change Order

1.3. The definitions contained in the City's Standard General Conditions for Construction Projects apply to this Agreement with the following clarifications:

1.3.2. Project Designer: When a Project Agreement requires JOC to provide design services for the Project, those rights, duties and responsibilities assigned by the City's Standard General Conditions for Construction Projects to the Project Designer shall be performed by JOC except those which require final decisions on behalf of City, in which case City shall make the final determination.
1.3.3. Contract and Contract Documents: Include the documents listed in Section 1.1 and 1.2 hereinabove.

ARTICLE 2 – OWNER'S REPRESENTATIVE

CITY has appointed an OWNER'S REPRESENTATIVE to manage this Contract and will appoint an OWNER'S REPRESENTATIVE to represent the CITY for each Project Agreement. The OWNER'S REPRESENTATIVE will assume all duties and responsibilities and will have all rights and authority assigned to the OWNER'S REPRESENTATIVE in the contract documents in connection with completion of the work. Any references to the Engineer or Project Engineer mean the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE does not have authority to verbally authorize any changes in the scope of work in any Project Agreement which would change the contract price or contract time as such changes must be by written Change Orders executed by appropriate CITY staff.

ARTICLE 3 – DESCRIPTION OF WORK

3.1 This is an indefinite quantity and indefinite delivery Job Order Contract for general contracting construction services, together with architectural and engineering services as necessary, related to roads, streets, transportation arterials, sidewalks, utilities located in transportation right-of-ways (ROW), and transportation related infrastructure improvements for the City and includes major and minor construction projects, renovations, repairs, additions, demolition, re-constructions and alterations services to City infrastructure for CITY. For any project determined by CITY to be appropriate for this Job Order Contract, CITY will issue a delivery order to JOC, at which time the

parties will execute a Project Agreement specifying the cost and completion schedule for that project. The total cost of work issued to JOC by the City of Chandler in any one-year contract term will not exceed Five Million Dollars ($5,000,000). Although CITY anticipates that JOC will be issued work, JOC is neither guaranteed any minimum amount of work nor any jobs at all. JOC is aware that there is more than one Contractor who has been awarded a Job Order Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project

3.2 JOC shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract and the Project Agreement, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

3.3 JOC shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. JOC shall be solely responsible for coordination of all of the work. JOC shall supervise, direct and cooperate fully with all subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time. JOC shall also coordinate their Work with the work of others, including work to be done by CITY, to assure compliance with schedules.

ARTICLE 4 - STANDARDS

4.1 Construction materials, methods and procedures of the Project shall be in accordance with the requirements of the latest edition of the following separate documents except as modified and supplemented by these Contract Documents:

A. Current City of Chandler City Code, including, but not limited to, Engineering Standard Specifications and Details and City of Chandler Traffic Barricade Manual and all applicable state and federal laws and regulations.

B. The portions of Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details) adopted by the City of Chandler.

ARTICLE 5 - CONTRACT TERM AND DELIVERY

5.1 The term of this Contract is one (1) year commencing on the date the Contract is executed by the last party to sign, with CITY reserving the option to extend the Contract for four (4) additional terms of one (1) year each.

5.2 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a construction progress schedule in Critical Path Method (CPM) format indicating the times for starting and completing the various stages of the work, including any Milestones specified in the Project Agreement and as more fully described herein. The construction progress schedule agreed upon by the parties shall be included as a part of the Project Agreement. Where applicable, such schedule shall include a schedule for project design and engineering, a schedule of shop drawings submission, and where applicable, a schedule of values of the work. These schedules shall be satisfactory in form and substance to OWNER'S REPRESENTATIVE. The schedule of values shall include quantities and unit prices aggregating the contract price, and shall subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of these schedules by CITY, they shall be incorporated into the Project Agreement.

5.3 Time is of the essence. All of the time limits for Milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Project Agreement, are of the essence of both the Project Agreement and this Job Order Contract.

5.4 Failure of JOC to perform any covenant or condition contained herein and in the Project Agreement within the time periods specified therein, shall constitute a material breach of both the Project Agreement and this Job Order Contract, entitling CITY to terminate either or both the Project Agreement and this Job Order Contract, unless JOC applies for and receives an extension of time in accordance with the procedures set forth herein. The amount of Liquidated and Special Damages, if appropriate, will be established in each Project Agreement.

5.5 The CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in this Job Order Contract or in the Project Agreement. Failure of JOC to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Job Order Contract and also of the Project Agreement, entitling CITY to all the remedies set forth herein or provided by law.

ARTICLE 6 - CONTRACT PRICE

6.1 CITY shall pay JOC for completion of each project the amount specified in each Project Agreement, which amount will be determined as follows;

6.1.1. The actual cost of the project shall be those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 A 1), 2), 3), 4), and 5) a., b., c., e., f., and g. but not those costs listed in Section 12.4 A 5) d. and h. (The costs listed in said d. and h. are included in JOC's overhead and profit as described below. The actual cost of the project shall not include those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 B.

6.1.2. Total amount payable to JOC for the project (actual cost, overhead, and profit) shall be determined by multiplying the total actual cost of the project by the appropriate coefficient from the table set forth herein below in section 6.2.

6.2 The coefficients shown in the table below shall be used to determine the total amount payable to JOC for all projects. Overhead and profit shall include JOC's costs of premiums for Bonds, Insurance, Taxes, and all those expenses or costs listed in the City of Chandler General Conditions for Construction, Section 12.4 B and all other expenses or costs not included in the actual cost of the project and the General Contractor Fee.

	Actual Cost of the Project (Delivery Order) Value					
	$0 - $49,999	$50,000 - $99,999	$100,000 - $199,999	$200,000 - $499,999	$500,000 - $999,999	$1,000,000 +
Coefficient	1.195	1.195	1.190	1.190	1.189	1.189

6.3 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a cost estimate for such work together with supporting data as requested by CITY. Upon acceptance of the cost estimate this price shall be inserted into the Project Agreement. For more complex Projects CITY may specify a longer period of time for JOC to complete the price estimate.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Permits, Engineering & Design

7.1.1 Unless otherwise specified in the Project Agreement, JOC shall obtain all construction permits and licenses. JOC shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. JOC shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

7.1.2 JOC shall provide Architectural and Engineering design as necessary or required for construction and permitting purposes and as further provided in the Project Agreement.

7.2 Plans, Shop Drawings and Samples

7.2.1 CITY shall provide to JOC the Project Scope of Work and Project Program for each Project or Job Order issued to JOC.

7.2.2 For each Project or Job Order issued, JOC shall prepare or cause to be prepared and submit to CITY for approval, a Schematic Design and Design Development Package and the Construction Documents Package. Such documents shall be signed and/or stamped by such licensed professionals as deemed necessary by JOC.

7.2.3 After CITY review and approval of the Schematic Design and Design Development Package and Construction Documents Package, JOC shall submit to CITY for review and approval, in accordance with the accepted schedule of shop drawing submissions, copies of all shop drawings, which shall have been checked by and stamped with the approval of JOC.

CITY'S review and approval of shop drawings or samples shall not relieve JOC from responsibility for any deviations from the contract documents unless JOC has in writing called CITY'S attention to such deviation at the time of submission and CITY has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY relieve JOC from responsibility for errors or omissions in the shop drawings or samples.

B. If JOC believes that any shop drawing or communication relative thereto justifies an increase in the contract price or contract time, JOC may make a claim therefore as provided in Article 11 or Article 12 of the City's General Conditions for Construction Contracts.

7.3 Correction of Mistakes. JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

8. ARTICLE 8 - LIQUIDATED AND SPECIAL DAMAGES

8.1. Liquidated Damages: CITY and JOC recognize that time is of the essence of both this Job Order Contract and the Project Agreement and that CITY will suffer financial loss, in addition to and apart from the costs described herein above, if the work and/or portions of the work are not performed and completed within the times specified in the Project Agreement, plus any extensions thereof allowed in accordance with this Job Order Contract. CITY and JOC also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the work or portion of the work is not completed on time. Accordingly, instead of requiring any such proof, CITY and JOC agree that liquidated damages for delay (but not as a penalty) are appropriate and that the actual dollar amount per day shall be determined in each Project Agreement for each calendar day that expires after the time specified in the Project Agreement for substantial completion until the work is substantially complete. After substantial completion, if JOC shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by CITY, JOC shall pay CITY the amount set forth in the Project Agreement for each day that expires after the time specified in the Project Agreement for final completion and readiness for final payment.

8.2. Special Damages: In addition to the amount provided for liquidated damages, JOC shall pay CITY the actual costs reasonably incurred by CITY for the CITY'S REPRESENTATIVE, engineering and inspection forces employed on the work for each day that expires after the time specified in the Project Agreement for final completion, including any extensions thereof made in accordance with this Job Order Contract, until the work is finally complete.

9. ARTICLE 9 - BONDS AND INSURANCE

Performance, Payment And Other Bonds

JOC shall furnish Performance and Payment Bonds, for the full amount of each Project Agreement, as security for the faithful performance and payment of all JOC'S obligations under each of the Project Agreements.

9.1.2. With the performance and payment bonds JOC, shall provide a copy of the surety company's Certificate of Authority, said copy to have been certified by the Arizona Department of Insurance. These Bonds shall remain in effect during the warranty period for all work performed under this contract after the date of final payment. All Bonds shall be in the form specified by A.R.S. §34-608 and be executed by such sureties as:

A. Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona;
B. Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department; and
C. Are acceptable to the City of Chandler.

9.1.3 All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

9.1.4 If the surety on any bond furnished by JOC is declared a bankrupt or becomes insolvent or it ceases to meet the requirements of Paragraph 18.1.2, JOC shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to CITY.

9.2 Contractor's Insurance

9.2.1 The JOC, at JOC's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or above and licensed to do business in the State of Arizona with policies and forms satisfactory to CITY.

9.2.2 All insurance required herein shall be maintained in full force and effect until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of CITY, constitute a material breach of this contract.

9.2.3 The JOC's insurance shall be primary insurance, and any insurance or self insurance maintained by CITY shall not contribute to it.

9.2.4 Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect CITY.

9.2.5 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the JOC's work or service.

9.2.6 The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to CITY under such policies. The JOC shall be solely responsible for deductible and/or self-insured retention and CITY, at its option, may require the JOC to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

9.2.7 Upon execution by JOC of this Contract, JOC shall furnish to CITY copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise JOC of any deficiencies in such policies and endorsements, and such receipt shall not relieve JOC from, or be deemed a waiver of the CITY'S right to insist on strict fulfillment of JOC's obligations under this contract.

9.2.8 The insurance policies, except Workers' Compensation, required by this contract shall name the CITY, its agents, representatives, officers, directors, officials and employees as additional insureds.

9.3 Required Coverage

General Liability

9.3.1 JOC shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $1,000,000 Products and Completed Operations Aggregate and $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacement thereof. The coverage shall not exclude X, C, U.

9.3.2 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

9.3.3 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for JOC's operations and products and completed operations.

Automobile Liability

9.3.4 JOC shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the JOC's any owned, hired, and non-owned vehicles assigned to or used in performance of the JOC's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

9.3.5 The JOC shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of JOC's employees engaged in the performance of the work; and, employer's liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.

9.3.6 In case any work is subcontracted, the JOC will require the subcontractor to provide Workers' Compensation and employer's Liability to at least the same extent as required of the JOC.

Builders' Risk (Property) Insurance

9.3.7 Prior to commencement of each specific project, the JOC shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance in the amount of the Project Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made for that project, or until no person or entity other than CITY has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of CITY, the JOC, and all subcontractors and sub-Subcontractors in the work during the life of the Project Agreement and course of construction, and shall continue until that project work is completed and accepted by CITY. For new construction projects, the JOC agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the JOC agrees to assume responsibility for loss or damage to the work being performed at least up to the full Project Agreement amount.

9.3.8 Builders' Risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements,

and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss.

9.3.9 Builders' Risk insurance must provide coverage from the time any covered property comes under JOC's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and not contributory.

9.3.10 If the Project Agreement requires testing of equipment or other similar operations, at the option of CITY, the JOC will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

9.4 Cancellation and Expiration Notice

9.4.1 Insurance evidenced by these certificates shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to CITY.

9.4.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the JOC's work or services and as evidenced by annual Certificates of Insurance.

ARTICLE 10 - INDEMNIFICATION

(a) **For Professional Liability:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by JOC, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions JOC may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(b) **Correction of Mistakes**:

JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

(c) **For all Other Liabilities, Hazards and Exposures:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of JOC and alleged to have been caused in whole or in part by any act or omission of JOC, anyone directly or indirectly employed by them or

anyone for whose acts JOC may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of JOC, its agents, employees or representatives to fulfill JOC's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(d) **Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

(e) **Insurance does not limit liability:**

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE 11 – PARTIAL INVALIDITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

ARTICLE 12 - COOPERATIVE PURCHASING

This agreement allows other governmental agencies and political subdivisions of the State to purchase goods and services under the terms and conditions of this Contract. JOC shall extend the same goods and services for the same prices and on the same terms and conditions to such other entities.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

This Contract will be effective on _____, 20_____.

FOR THECITY OF CHANDLER

_____
MAYOR Date

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
480-782-3307

APPROVED AS TO FORM:

_____
City Attorney By:

ATTEST:

_____
City Clerk SEAL

FOR THE JOC

_____
Signature

ADDRESS FOR NOTICE

_____
_____
_____
Phone: _____

ATTEST: If Corporation

_____
Secretary

PERFORMANCE BOND

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____(hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated

the _____ day of _____, 20___ for construction of **[TITLE] CITY PROJECT NO. JOC 07-12** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), as Principal, and _____(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20___ for construction of **[TITLE], CITY PROJECT NO. JOC 07-12** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

CITY OF CHANDLER

CERTIFICATE OF INSURABILITY

CITY OF CHANDLER PRIVILEGE TAX LICENSE

PROJECT NAME: [TITLE]

PROJECT NUMBER: JOC 07-12

JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-11

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JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-11

This CONTRACT is made this day of , 2007, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **Nesbitt Contracting Co., Inc., a Corporation of the State of Arizona** , (hereinafter referred to as "JOC").

CITY and JOC, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 The Contract Documents for each project shall include:

- This Job Order Contract,
- The JOC's Performance Bond and Payment Bond
- The City's Standard General Conditions for Construction Projects to the extent they do not conflict with this or the Project Agreement and are applicable to the project,
- Supplementary Conditions, if any,
- The Project Agreement for that job order,
- Work Change Directives or Change Orders, if any, and
- The project plans including project design and shop drawings for each project.

1.2. The following CITY standard forms are attached hereto and made a part hereof and shall be used as referenced herein:

A. Application for Payment
B. Certificate of Completion
C. Contractor's Affidavit of Settlement of Claims
D. Request for Change Order

1.3. The definitions contained in the City's Standard General Conditions for Construction Projects apply to this Agreement with the following clarifications:

1.3.2. Project Designer: When a Project Agreement requires JOC to provide design services for the Project, those rights, duties and responsibilities assigned by the City's Standard General Conditions for Construction Projects to the Project Designer shall be performed by JOC except those which require final decisions on behalf of City, in which case City shall make the final determination.

1.3.3. Contract and Contract Documents: Include the documents listed in Section 1.1 and 1.2 hereinabove.

ARTICLE 2 – OWNER'S REPRESENTATIVE

CITY has appointed an OWNER'S REPRESENTATIVE to manage this Contract and will appoint an OWNER'S REPRESENTATIVE to represent the CITY for each Project Agreement. The OWNER'S REPRESENTATIVE will assume all duties and responsibilities and will have all rights and authority assigned to the OWNER'S REPRESENTATIVE in the contract documents in connection with completion of the work. Any references to the Engineer or Project Engineer mean the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE does not have authority to verbally authorize any changes in the scope of work in any Project Agreement which would change the contract price or contract time as such changes must be by written Change Orders executed by appropriate CITY staff.

ARTICLE 3 – DESCRIPTION OF WORK

3.1 This is an indefinite quantity and indefinite delivery Job Order Contract for general contracting construction services, together with architectural and engineering services as necessary, related to roads, streets, transportation arterials, sidewalks, utilities located in transportation right-of-ways (ROW), and transportation related infrastructure improvements for the City and includes major and minor construction projects, renovations, repairs, additions, demolition, re-constructions and alterations services to City infrastructure for CITY. For any project determined by CITY to be appropriate for this Job Order Contract, CITY will issue a delivery order to JOC, at which time the

parties will execute a Project Agreement specifying the cost and completion schedule for that project. The total cost of work issued to JOC by the City of Chandler in any one-year contract term will not exceed Five Million Dollars ($5,000,000). Although CITY anticipates that JOC will be issued work, JOC is neither guaranteed any minimum amount of work nor any jobs at all. JOC is aware that there is more than one Contractor who has been awarded a Job Order Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project

3.2 JOC shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract and the Project Agreement, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

3.3 JOC shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. JOC shall be solely responsible for coordination of all of the work. JOC shall supervise, direct and cooperate fully with all subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time. JOC shall also coordinate their Work with the work of others, including work to be done by CITY, to assure compliance with schedules.

ARTICLE 4 - STANDARDS

4.1 Construction materials, methods and procedures of the Project shall be in accordance with the requirements of the latest edition of the following separate documents except as modified and supplemented by these Contract Documents:

A. Current City of Chandler City Code, including, but not limited to, Engineering Standard Specifications and Details and City of Chandler Traffic Barricade Manual and all applicable state and federal laws and regulations.

B. The portions of Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details) adopted by the City of Chandler.

ARTICLE 5 - CONTRACT TERM AND DELIVERY

5.1 The term of this Contract is one (1) year commencing on the date the Contract is executed by the last party to sign, with CITY reserving the option to extend the Contract for four (4) additional terms of one (1) year each.

5.2 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a construction progress schedule in Critical Path Method (CPM) format indicating the times for starting and completing the various stages of the work, including any Milestones specified in the Project Agreement and as more fully described herein. The construction progress schedule agreed upon by the parties shall be included as a part of the Project Agreement. Where applicable, such schedule shall include a schedule for project design and engineering, a schedule of shop drawings submission, and where applicable, a schedule of values of the work. These schedules shall be satisfactory in form and substance to OWNER'S REPRESENTATIVE. The schedule of values shall include quantities and unit prices aggregating the contract price, and shall subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of these schedules by CITY, they shall be incorporated into the Project Agreement.

5.3 Time is of the essence. All of the time limits for Milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Project Agreement, are of the essence of both the Project Agreement and this Job Order Contract.

5.4 Failure of JOC to perform any covenant or condition contained herein and in the Project Agreement within the time periods specified therein, shall constitute a material breach of both the Project Agreement and this Job Order Contract, entitling CITY to terminate either or both the Project Agreement and this Job Order Contract, unless JOC applies for and receives an extension of time in accordance with the procedures set forth herein. The amount of Liquidated and Special Damages, if appropriate, will be established in each Project Agreement.

5.5 The CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in this Job Order Contract or in the Project Agreement. Failure of JOC to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Job Order Contract and also of the Project Agreement, entitling CITY to all the remedies set forth herein or provided by law.

ARTICLE 6 - CONTRACT PRICE

6.1 CITY shall pay JOC for completion of each project the amount specified in each Project Agreement, which amount will be determined as follows;

6.1.1. The actual cost of the project shall be those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 A 1), 2), 3), 4), and 5) a., b., c., e., f., and g. but not those costs listed in Section 12.4 A 5) d. and h. (The costs listed in said d. and h. are included in JOC's overhead and profit as described below. The actual cost of the project shall not include those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 B.

6.1.2. Total amount payable to JOC for the project (actual cost, overhead, and profit) shall be determined by multiplying the total actual cost of the project by the appropriate coefficient from the table set forth herein below in section 6.2.

6.2 The coefficients shown in the table below shall be used to determine the total amount payable to JOC for all projects. Overhead and profit shall include JOC's costs of premiums for Bonds, Insurance, Taxes, and all those expenses or costs listed in the City of Chandler General Conditions for Construction, Section 12.4 B and all other expenses or costs not included in the actual cost of the project and the General Contractor Fee.

	Actual Cost of the Project (Delivery Order) Value					
	$0 - $49,999	$50,000 - $99,999	$100,000 - $199,999	$200,000 - $499,999	$500,000 - $999,999	$1,000,000 +
Coefficient	1.22	1.22	1.21	1.20	1.20	1.20

6.3 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a cost estimate for such work together with supporting data as requested by CITY. Upon acceptance of the cost estimate this price shall be inserted into the Project Agreement. For more complex Projects CITY may specify a longer period of time for JOC to complete the price estimate.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Permits, Engineering & Design

7.1.1 Unless otherwise specified in the Project Agreement, JOC shall obtain all construction permits and licenses. JOC shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. JOC shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

7.1.2 JOC shall provide Architectural and Engineering design as necessary or required for construction and permitting purposes and as further provided in the Project Agreement.

7.2 Plans, Shop Drawings and Samples

7.2.1 CITY shall provide to JOC the Project Scope of Work and Project Program for each Project or Job Order issued to JOC.

7.2.2 For each Project or Job Order issued, JOC shall prepare or cause to be prepared and submit to CITY for approval, a Schematic Design and Design Development Package and the Construction Documents Package. Such documents shall be signed and/or stamped by such licensed professionals as deemed necessary by JOC.

7.2.3 After CITY review and approval of the Schematic Design and Design Development Package and Construction Documents Package, JOC shall submit to CITY for review and approval, in accordance with the accepted schedule of shop drawing submissions, copies of all shop drawings, which shall have been checked by and stamped with the approval of JOC.

CITY'S review and approval of shop drawings or samples shall not relieve JOC from responsibility for any deviations from the contract documents unless JOC has in writing called CITY'S attention to such deviation at the time of submission and CITY has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY relieve JOC from responsibility for errors or omissions in the shop drawings or samples.

B. If JOC believes that any shop drawing or communication relative thereto justifies an increase in the contract price or contract time, JOC may make a claim therefore as provided in Article 11 or Article 12 of the City's General Conditions for Construction Contracts.

7.3 Correction of Mistakes. JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

8. ARTICLE 8 - LIQUIDATED AND SPECIAL DAMAGES

8.1. Liquidated Damages: CITY and JOC recognize that time is of the essence of both this Job Order Contract and the Project Agreement and that CITY will suffer financial loss, in addition to and apart from the costs described herein above, if the work and/or portions of the work are not performed and completed within the times specified in the Project Agreement, plus any extensions thereof allowed in accordance with this Job Order Contract. CITY and JOC also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the work or portion of the work is not completed on time. Accordingly, instead of requiring any such proof, CITY and JOC agree that liquidated damages for delay (but not as a penalty) are appropriate and that the actual dollar amount per day shall be determined in each Project Agreement for each calendar day that expires after the time specified in the Project Agreement for substantial completion until the work is substantially complete. After substantial completion, if JOC shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by CITY, JOC shall pay CITY the amount set forth in the Project Agreement for each day that expires after the time specified in the Project Agreement for final completion and readiness for final payment.

8.2. Special Damages: In addition to the amount provided for liquidated damages, JOC shall pay CITY the actual costs reasonably incurred by CITY for the CITY'S REPRESENTATIVE, engineering and inspection forces employed on the work for each day that expires after the time specified in the Project Agreement for final completion, including any extensions thereof made in accordance with this Job Order Contract, until the work is finally complete.

9. ARTICLE 9 - BONDS AND INSURANCE

Performance, Payment And Other Bonds

JOC shall furnish Performance and Payment Bonds, for the full amount of each Project Agreement, as security for the faithful performance and payment of all JOC'S obligations under each of the Project Agreements.

9.1.2. With the performance and payment bonds JOC, shall provide a copy of the surety company's Certificate of Authority, said copy to have been certified by the Arizona Department of Insurance. These Bonds shall remain in effect during the warranty period for all work performed under this contract after the date of final payment. All Bonds shall be in the form specified by A.R.S. §34-608 and be executed by such sureties as:

A. Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona;
B. Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department; and
C. Are acceptable to the City of Chandler.

9.1.3 All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

9.1.4 If the surety on any bond furnished by JOC is declared a bankrupt or becomes insolvent or it ceases to meet the requirements of Paragraph 18.1.2, JOC shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to CITY.

9.2 Contractor's Insurance

9.2.1 The JOC, at JOC's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or above and licensed to do business in the State of Arizona with policies and forms satisfactory to CITY.

9.2.2 All insurance required herein shall be maintained in full force and effect until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of CITY, constitute a material breach of this contract.

9.2.3 The JOC's insurance shall be primary insurance, and any insurance or self insurance maintained by CITY shall not contribute to it.

9.2.4 Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect CITY.

9.2.5 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the JOC's work or service.

9.2.6 The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to CITY under such policies. The JOC shall be solely responsible for deductible and/or self-insured retention and CITY, at its option, may require the JOC to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

9.2.7 Upon execution by JOC of this Contract, JOC shall furnish to CITY copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise JOC of any deficiencies in such policies and endorsements, and such receipt shall not relieve JOC from, or be deemed a waiver of the CITY'S right to insist on strict fulfillment of JOC's obligations under this contract.

9.2.8 The insurance policies, except Workers' Compensation, required by this contract shall name the CITY, its agents, representatives, officers, directors, officials and employees as additional insureds.

9.3 Required Coverage

General Liability

9.3.1 JOC shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $1,000,000 Products and Completed Operations Aggregate and $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacement thereof. The coverage shall not exclude X, C, U.

9.3.2 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

9.3.3 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for JOC's operations and products and completed operations.

Automobile Liability

9.3.4 JOC shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the JOC's any owned, hired, and non-owned vehicles assigned to or used in performance of the JOC's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

9.3.5 The JOC shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of JOC's employees engaged in the performance of the work; and, employer's liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.

9.3.6 In case any work is subcontracted, the JOC will require the subcontractor to provide Workers' Compensation and employer's Liability to at least the same extent as required of the JOC.

Builders' Risk (Property) Insurance

9.3.7 Prior to commencement of each specific project, the JOC shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance in the amount of the Project Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made for that project, or until no person or entity other than CITY has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of CITY, the JOC, and all subcontractors and sub-Subcontractors in the work during the life of the Project Agreement and course of construction, and shall continue until that project work is completed and accepted by CITY. For new construction projects, the JOC agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the JOC agrees to assume responsibility for loss or damage to the work being performed at least up to the full Project Agreement amount.

9.3.8 Builders' Risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss.

9.3.9 Builders' Risk insurance must provide coverage from the time any covered property comes under JOC's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and not contributory.

9.3.10 If the Project Agreement requires testing of equipment or other similar operations, at the option of CITY, the JOC will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

9.4 Cancellation and Expiration Notice

9.4.1 Insurance evidenced by these certificates shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to CITY.

9.4.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the JOC's work or services and as evidenced by annual Certificates of Insurance.

ARTICLE 10 - INDEMNIFICATION

(a) **For Professional Liability:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by JOC, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions JOC may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(b) **Correction of Mistakes**:

JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

(c) **For all Other Liabilities, Hazards and Exposures:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of JOC and alleged to have been caused in whole or in part by any act or omission of JOC, anyone directly or indirectly employed by them or anyone for whose acts JOC may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on

the part of JOC, its agents, employees or representatives to fulfill JOC's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(d) **Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

(e) **Insurance does not limit liability:**

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE 11 – PARTIAL INVALIDITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

ARTICLE 12 - COOPERATIVE PURCHASING

This agreement allows other governmental agencies and political subdivisions of the State to purchase goods and services under the terms and conditions of this Contract. JOC shall extend the same goods and services for the same prices and on the same terms and conditions to such other entities.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

This Contract will be effective on _____, 20_____.

FOR THECITY OF CHANDLER

_____
MAYOR Date

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
480-782-3307

APPROVED AS TO FORM:

_____
City Attorney By:

ATTEST:

_____
City Clerk SEAL

FOR THE JOC

_____
Signature

ADDRESS FOR NOTICE
Nesbitt Contracting Co., Inc.
100 S. Price Road Tempe, AZ
Tempe, AZ 85281
Phone: (480) 894-2831

ATTEST: If Corporation

_____
Secretary

PERFORMANCE BOND

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____(hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated

the _____ day of _____, 20___ for construction of **Transportation Related Construction CITY PROJECT NO. JOC 07-11** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), as Principal, and _____(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20___ for construction of **Transportation Related Construction, CITY PROJECT NO. JOC 07-11** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

CITY OF CHANDLER

CERTIFICATE OF INSURABILITY

CITY OF CHANDLER PRIVILEGE TAX LICENSE

PROJECT NAME: Transportation Related Construction

PROJECT NUMBER: JOC 07-11

JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-03

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JOB ORDER CONTRACT FOR TRANSPORTATION RELATED CONSTRUCTION SERVICES

CONTRACT NO: JOC 07-03

This CONTRACT is made this day of , 2007, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **J. Banicki, Inc., an Arizona corporation** , (hereinafter referred to as "JOC").

CITY and JOC, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 The Contract Documents for each project shall include:

- This Job Order Contract,
- The JOC's Performance Bond and Payment Bond
- The City's Standard General Conditions for Construction Projects to the extent they do not conflict with this or the Project Agreement and are applicable to the project,
- Supplementary Conditions, if any,
- The Project Agreement for that job order,
- Work Change Directives or Change Orders, if any, and
- The project plans including project design and shop drawings for each project.

1.2. The following CITY standard forms are attached hereto and made a part hereof and shall be used as referenced herein:

A. Application for Payment
B. Certificate of Completion
C. Contractor's Affidavit of Settlement of Claims
D. Request for Change Order

1.3. The definitions contained in the City's Standard General Conditions for Construction Projects apply to this Agreement with the following clarifications:

1.3.2. Project Designer: When a Project Agreement requires JOC to provide design services for the Project, those rights, duties and responsibilities assigned by the City's Standard General Conditions for Construction Projects to the Project Designer shall be performed by JOC except those which require final decisions on behalf of City, in which case City shall make the final determination.
1.3.3. Contract and Contract Documents: Include the documents listed in Section 1.1 and 1.2 hereinabove.

ARTICLE 2 – OWNER'S REPRESENTATIVE

CITY has appointed an OWNER'S REPRESENTATIVE to manage this Contract and will appoint an OWNER'S REPRESENTATIVE to represent the CITY for each Project Agreement. The OWNER'S REPRESENTATIVE will assume all duties and responsibilities and will have all rights and authority assigned to the OWNER'S REPRESENTATIVE in the contract documents in connection with completion of the work. Any references to the Engineer or Project Engineer mean the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE does not have authority to verbally authorize any changes in the scope of work in any Project Agreement which would change the contract price or contract time as such changes must be by written Change Orders executed by appropriate CITY staff.

ARTICLE 3 – DESCRIPTION OF WORK

3.1 This is an indefinite quantity and indefinite delivery Job Order Contract for general contracting construction services, together with architectural and engineering services as necessary, related to roads, streets, transportation arterials, sidewalks, utilities located in transportation right-of-ways (ROW), and transportation related infrastructure improvements for the City and includes major and minor construction projects, renovations, repairs, additions, demolition, re-constructions and alterations services to City infrastructure for CITY. For any project determined by CITY to be

appropriate for this Job Order Contract, CITY will issue a delivery order to JOC, at which time the parties will execute a Project Agreement specifying the cost and completion schedule for that project. The total cost of work issued to JOC by the City of Chandler in any one-year contract term will not exceed Five Million Dollars ($5,000,000). Although CITY anticipates that JOC will be issued work, JOC is neither guaranteed any minimum amount of work nor any jobs at all. JOC is aware that there is more than one Contractor who has been awarded a Job Order Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project

3.2 JOC shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract and the Project Agreement, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

3.3 JOC shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. JOC shall be solely responsible for coordination of all of the work. JOC shall supervise, direct and cooperate fully with all subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time. JOC shall also coordinate their Work with the work of others, including work to be done by CITY, to assure compliance with schedules.

ARTICLE 4 - STANDARDS

4.1 Construction materials, methods and procedures of the Project shall be in accordance with the requirements of the latest edition of the following separate documents except as modified and supplemented by these Contract Documents:

A. Current City of Chandler City Code, including, but not limited to, Engineering Standard Specifications and Details and City of Chandler Traffic Barricade Manual and all applicable state and federal laws and regulations.

B. The portions of Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details) adopted by the City of Chandler.

ARTICLE 5 - CONTRACT TERM AND DELIVERY

5.1 The term of this Contract is one (1) year commencing on the date the Contract is executed by the last party to sign, with CITY reserving the option to extend the Contract for four (4) additional terms of one (1) year each.

5.2 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a construction progress schedule in Critical Path Method (CPM) format indicating the times for starting and completing the various stages of the work, including any Milestones specified in the Project Agreement and as more fully described herein. The construction progress schedule agreed upon by the parties shall be included as a part of the Project Agreement. Where applicable, such schedule shall include a schedule for project design and engineering, a schedule of shop drawings submission, and where applicable, a schedule of values of the work. These schedules shall be satisfactory in form and substance to OWNER'S REPRESENTATIVE. The schedule of values shall include quantities and unit prices aggregating the contract price, and shall subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of these schedules by CITY, they shall be incorporated into the Project Agreement.

5.3 Time is of the essence. All of the time limits for Milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Project Agreement, are of the essence of both the Project Agreement and this Job Order Contract.

5.4 Failure of JOC to perform any covenant or condition contained herein and in the Project Agreement within the time periods specified therein, shall constitute a material breach of both the Project Agreement and this Job Order Contract, entitling CITY to terminate either or both the Project Agreement and this Job Order Contract, unless JOC applies for and receives an extension of time in accordance with the procedures set forth herein. The amount of Liquidated and Special Damages, if appropriate, will be established in each Project Agreement.

5.5 The CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in this Job Order Contract or in the Project Agreement. Failure of JOC to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Job Order Contract and also of the Project Agreement, entitling CITY to all the remedies set forth herein or provided by law.

ARTICLE 6 - CONTRACT PRICE

6.1 CITY shall pay JOC for completion of each project the amount specified in each Project Agreement, which amount will be determined as follows;

6.1.1. The actual cost of the project shall be those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 A 1), 2), 3), 4), and 5) a., b., c., e., f., and g. but not those costs listed in Section 12.4 A 5) d. and h. (The costs listed in said d. and h. are included in JOC's overhead and profit as described below. The actual cost of the project shall not include those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 B.

6.1.2. Total amount payable to JOC for the project (actual cost, overhead, and profit) shall be determined by multiplying the total actual cost of the project by the appropriate coefficient from the table set forth herein below in section 6.2.

6.2 The coefficients shown in the table below shall be used to determine the total amount payable to JOC for all projects. Overhead and profit shall include JOC's costs of premiums for Bonds, Insurance, Taxes, and all those expenses or costs listed in the City of Chandler General Conditions for Construction, Section 12.4 B and all other expenses or costs not included in the actual cost of the project and the General Contractor Fee.

	Actual Cost of the Project (Delivery Order) Value					
	$0 - $49,999	$50,000 - $99,999	$100,000 - $199,999	$200,000 - $499,999	$500,000 - $999,999	$1,000,000 +
Coefficient	1.226	1.216	1.211	1.206	1.196	1.191

6.3 Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a cost estimate for such work together with supporting data as requested by CITY. Upon acceptance of the cost estimate this price shall be inserted into the Project Agreement. For more complex Projects CITY may specify a longer period of time for JOC to complete the price estimate.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Permits, Engineering & Design

7.1.1 Unless otherwise specified in the Project Agreement, JOC shall obtain all construction permits and licenses. JOC shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. JOC shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

7.1.2 JOC shall provide Architectural and Engineering design as necessary or required for construction and permitting purposes and as further provided in the Project Agreement.

7.2 Plans, Shop Drawings and Samples

7.2.1 CITY shall provide to JOC the Project Scope of Work and Project Program for each Project or Job Order issued to JOC.

7.2.2 For each Project or Job Order issued, JOC shall prepare or cause to be prepared and submit to CITY for approval, a Schematic Design and Design Development Package and the Construction Documents Package. Such documents shall be signed and/or stamped by such licensed professionals as deemed necessary by JOC.

7.2.3 After CITY review and approval of the Schematic Design and Design Development Package and Construction Documents Package, JOC shall submit to CITY for review and approval, in accordance with the accepted schedule of shop drawing submissions, copies of all shop drawings, which shall have been checked by and stamped with the approval of JOC.

CITY'S review and approval of shop drawings or samples shall not relieve JOC from responsibility for any deviations from the contract documents unless JOC has in writing called CITY'S attention to such deviation at the time of submission and CITY has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY relieve JOC from responsibility for errors or omissions in the shop drawings or samples.

B. If JOC believes that any shop drawing or communication relative thereto justifies an increase in the contract price or contract time, JOC may make a claim therefore as provided in Article 11 or Article 12 of the City's General Conditions for Construction Contracts.

7.3 Correction of Mistakes. JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

8. ARTICLE 8 - LIQUIDATED AND SPECIAL DAMAGES

8.1. Liquidated Damages: CITY and JOC recognize that time is of the essence of both this Job Order Contract and the Project Agreement and that CITY will suffer financial loss, in addition to and apart from the costs described herein above, if the work and/or portions of the work are not performed and completed within the times specified in the Project Agreement, plus any extensions thereof allowed in accordance with this Job Order Contract. CITY and JOC also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the work or portion of the work is not completed on time. Accordingly, instead of requiring any such proof, CITY and JOC agree that liquidated damages for delay (but not as a penalty) are appropriate and that the actual dollar amount per day shall be determined in each Project Agreement for each calendar day that expires after the time specified in the Project Agreement for substantial completion until the work is substantially complete. After substantial completion, if JOC shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by CITY, JOC shall pay CITY the amount set forth in the Project Agreement for each day that expires after the time specified in the Project Agreement for final completion and readiness for final payment.

8.2. Special Damages: In addition to the amount provided for liquidated damages, JOC shall pay CITY the actual costs reasonably incurred by CITY for the CITY'S REPRESENTATIVE, engineering and inspection forces employed on the work for each day that expires after the time specified in the Project Agreement for final completion, including any extensions thereof made in accordance with this Job Order Contract, until the work is finally complete.

9. ARTICLE 9 - BONDS AND INSURANCE

Performance, Payment And Other Bonds

JOC shall furnish Performance and Payment Bonds, for the full amount of each Project Agreement, as security for the faithful performance and payment of all JOC'S obligations under each of the Project Agreements.

9.1.2. With the performance and payment bonds JOC, shall provide a copy of the surety company's Certificate of Authority, said copy to have been certified by the Arizona Department of Insurance. These Bonds shall remain in effect during the warranty period for all work performed under this contract after the date of final payment. All Bonds shall be in the form specified by A.R.S. §34-608 and be executed by such sureties as:

A. Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona;
B. Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department; and
C. Are acceptable to the City of Chandler.

9.1.3 All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

9.1.4 If the surety on any bond furnished by JOC is declared a bankrupt or becomes insolvent or it ceases to meet the requirements of Paragraph 18.1.2, JOC shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to CITY.

9.2 Contractor's Insurance

9.2.1 The JOC, at JOC's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or above and licensed to do business in the State of Arizona with policies and forms satisfactory to CITY.

9.2.2 All insurance required herein shall be maintained in full force and effect until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of CITY, constitute a material breach of this contract.

9.2.3 The JOC's insurance shall be primary insurance, and any insurance or self insurance maintained by CITY shall not contribute to it.

9.2.4 Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect CITY.

9.2.5 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the JOC's work or service.

9.2.6 The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to CITY under such policies. The JOC shall be solely responsible for deductible and/or self-insured retention and CITY, at its option, may require the JOC to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

9.2.7 Upon execution by JOC of this Contract, JOC shall furnish to CITY copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise JOC of any deficiencies in such policies and endorsements, and such receipt shall not relieve JOC from, or be deemed a waiver of the CITY'S right to insist on strict fulfillment of JOC's obligations under this contract.

9.2.8 The insurance policies, except Workers' Compensation, required by this contract shall name the CITY, its agents, representatives, officers, directors, officials and employees as additional insureds.

9.3 Required Coverage

General Liability

9.3.1 JOC shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $1,000,000 Products and Completed Operations Aggregate and $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacement thereof. The coverage shall not exclude X, C, U.

9.3.2 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

9.3.3 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for JOC's operations and products and completed operations.

Automobile Liability

9.3.4 JOC shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the JOC's any owned, hired, and non-owned vehicles assigned to or used in performance of the JOC's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

9.3.5 The JOC shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of JOC's employees engaged in the performance of the work; and, employer's liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.

9.3.6 In case any work is subcontracted, the JOC will require the subcontractor to provide Workers' Compensation and employer's Liability to at least the same extent as required of the JOC.

Builders' Risk (Property) Insurance

9.3.7 Prior to commencement of each specific project, the JOC shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance in the amount of the Project Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made for that project, or until no person or entity other than CITY has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of CITY, the JOC, and all subcontractors and sub-Subcontractors in the work during the life of the Project Agreement and course of construction, and shall continue until that project work is completed and accepted by CITY. For new construction projects, the JOC agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the JOC agrees to assume responsibility for loss or damage to the work being performed at least up to the full Project Agreement amount.

9.3.8 Builders' Risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes

including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss.

9.3.9 Builders' Risk insurance must provide coverage from the time any covered property comes under JOC's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and not contributory.

9.3.10 If the Project Agreement requires testing of equipment or other similar operations, at the option of CITY, the JOC will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

9.4 Cancellation and Expiration Notice

9.4.1 Insurance evidenced by these certificates shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to CITY.

9.4.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the JOC's work or services and as evidenced by annual Certificates of Insurance.

ARTICLE 10 - INDEMNIFICATION

(a) **For Professional Liability:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by JOC, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions JOC may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(b) **Correction of Mistakes**:

JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

(c) **For all Other Liabilities, Hazards and Exposures:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural

resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of JOC and alleged to have been caused in whole or in part by any act or omission of JOC, anyone directly or indirectly employed by them or anyone for whose acts JOC may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of JOC, its agents, employees or representatives to fulfill JOC's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(d) **Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

(e) **Insurance does not limit liability:**

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE 11 – PARTIAL INVALIDITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

ARTICLE 12 - COOPERATIVE PURCHASING

This agreement allows other governmental agencies and political subdivisions of the State to purchase goods and services under the terms and conditions of this Contract. JOC shall extend the same goods and services for the same prices and on the same terms and conditions to such other entities.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

This Contract will be effective on _____, 20_____.

FOR THECITY OF CHANDLER

_____
MAYOR Date

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
480-782-3307

APPROVED AS TO FORM:

_____
City Attorney By: _____

ATTEST:

_____
City Clerk

SEAL

FOR THE JOC

Jerry Banicki Signature President

ADDRESS FOR NOTICE
1009 W. Broadway Rd, Ste C
Tempe, AZ 85282

Phone: 480-921-8016

ATTEST: If Corporation

Secretary Michael Fuhrmann

PERFORMANCE BOND

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____(hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated

the _____ day of _____, 20___ for construction of **CITY PROJECT NO. JOC 07-03** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:_____

(hereinafter "Principal"), as Principal, and _____(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto _____ (hereinafter "Obligee") in the amount of _____-_____ (Dollars) ($_____), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20___ for construction of **CITY PROJECT NO. JOC 07-03** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20__.

_____
PRINCIPAL SEAL

_____
AGENT OF RECORD

By _____

_____
SURETY SEAL

_____
AGENT ADDRESS

CITY OF CHANDLER

CERTIFICATE OF INSURABILITY

CITY OF CHANDLER PRIVILEGE TAX LICENSE

PROJECT NAME: Transportation Related Construction

PROJECT NUMBER: JOC 07-03