

**APPENDIX "C"**  
**SPECIAL CONDITIONS- MULTIPLE AWARD JOB ORDER AGREEMENT**

**ARTICLE 1. OVERVIEW AND DEFINITIONS**

**1.1 Overview of Job Order Contracting Arrangement**

This Agreement establishes a Multiple-Award, indefinite quantity, job order contracting arrangement for such construction services within the scope of this Agreement as COUNTY may request from time to time by issuance of an individual Job Order Contract for each Project. COUNTY may select a Contractor for the award of a Job Order Contract for a Project expected to cost less than \$100,000 based on availability or such other criteria as COUNTY may determine in its sole discretion. The selection of the Contractor for award of a Job Order Contract for a Project valued at \$100,000 or greater will be based on the responses to a simplified request for quotation covering either cost or cost and schedule from ALL Job Order Contractors under contract to PCDOT. Job order contractors must provide a quote within seven (7) working days of a request for quotation and begin work within five (5) working days of the Notice to Proceed in order to be considered eligible for award of the Job Order, unless otherwise specified in the County's request.

The COUNTY reserves the right to include Pre-Construction Services under an individual Job Order, if required.

The amount to be paid by COUNTY for the Project under each Job Order is the Contract Price in the Job Order. The Contract Price includes the Contract Price for the Work (Construction) and the Contract Price for Pre-Construction Services included in the Job Order, if any.

The Contract Price for each Job Order shall not exceed \$1,000,000.00, including any Change Orders.

There is no limit on the number of Job Orders COUNTY may issue to any Contractor during any twelve (12) month term of this Contract or during the entire period this Contract is in effect.

Generally, a CONTRACTOR may not refuse to quote any Job Order under this Agreement properly issued by COUNTY, unless CONTRACTOR can legitimately claim the scope of work is poorly defined, hazardous to health or safety, outside the bounds of the intended use of this Agreement, or the Contractor does not have the capacity to accept the Job Order and begin work in a timely manner.

COUNTY shall have the right to perform work of the types included in this Agreement itself or to have other contractors perform such work.

**1.2 Definitions**

The following terms will have the following meanings when used in the Agreement. Other terms may be defined elsewhere in the Documents. Terms not defined in the Agreement shall have their ordinary meaning within the usage of the trade. The presence or absence of initial capitals does not indicate a change in meaning.

**"Alternatives Analysis"** means assessment of alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets County requirements.

**"Contract Price"** means the price to be paid for the Work (and for Pre-Construction Services, if any) as specified in the Job Order. The Contract Price shall be a fixed, lump sum price, or a Not-to-Exceed Guaranteed Maximum Price, based on the Contractor's accepted quotation.

**"Contract Time"** means the time for performance of the Work under a Job Order as specified in the Job Order commencing with the Start Date and ending with Final Completion Date set forth in the Job Order, as modified.

**"Critical Path Method (CPM)"** is a scheduling technique which identifies the logical sequence of the activities occurring in a construction project, the anticipated time required to complete each activity in the project, and the activities that must be completed on schedule to finish the project within the anticipated time. Typically, activities are arrayed in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

**"Critical Path"** means that sequence of dependent activities in a project that will take the longest time to complete. Any delay in the completion of any of these activities may extend the Substantial Completion date.

**"Day"** means calendar day unless specifically provided otherwise or required by law.

**"Design Professional (DP)"** means, as to a Job Order, the person, if any, who will perform Design Services relating to the Work under the Job Order and who is designated as the Design Professional in the Job Order.

**"Drawings and Specifications"** means, as to a Job Order, the drawings and specifications, if any, attached to the Job Order and specifications included in the Job Order Contract Documents. The Drawings and Specifications set forth the requirements for construction of the Project. Where there are no drawings and specifications for the Work prepared by a Design Professional, COUNTY will deliver to the Contractor line drawings and/or a written description of the Work and, in each such case, the line drawings and/or the written description shall be deemed the drawings for the Work for that Job Order for all purposes.

**"Final Completion Date"** means, as to a Job Order, the date by which CONTRACTOR shall have completed all Work under a Job Order, including, without limitation, all deficiency, correction and incomplete items (Punch List).

**"Job Order"** means the Contract for a Project executed by COUNTY under this Agreement, as it may be modified by Change Orders, if any, relating to the Project under the Job Order.

**"Minor Change"** means a change in the Work having no impact on cost or time or the COUNTY's approved design intent, as determined by COUNTY.

**"Notice to Proceed"** means written notice given by County to the Contractor fixing the date on which the Contractor will start to perform the Work under that Job Order. The start date will be the Start Date stated in the Job Order.

**"Plans and Specifications"** means the plans and specifications upon which the Job Order's price proposal is based.

**"Pre-Construction Services"** means the performance under a Job Order requiring such services of alternatives analysis, cost or schedule estimating, value engineering, constructability or other design reviews or consultation in the review of a COUNTY or third-party design prepared by a COUNTY-provided design professional.

**"Project"** means each project of COUNTY as to which some or all of the work is to be performed under a Job Order.

**"Qualifications/Proposals Documents"** means the Solicitation for Qualifications issued by COUNTY for this Job Order Contract, all Addenda thereto, and all information and documents submitted by CONTRACTOR

relating thereto including, without limitation, Contractor's submission of formal sealed qualifications, and also including, without limitation, the subcontractor management plan submitted by the Contractor. It also includes all other qualifications/proposals documents: that is all documents and materials delivered by COUNTY to Contractor in connection with Contractor's submission of qualifications and submission of a proposal for the contract.

**"Sales Taxes"** - Sales taxes are deemed to include all sales, use, excise, consumer, franchise, and other taxes which are legally enacted when negotiations of a Job Order Contract Price are concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

**"Schedule of Values (SOV)"** A spreadsheet with estimated costs organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the Contractor's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable. The SOV may be output from the Project Schedule if the Project Schedule is cost-loaded.

**"Start Date"** means, as to a Job Order, the date specified in the Notice to Proceed for that Job Order for Contractor to begin the Work.

**"Subcontractor"** means a subcontractor of the Contractor for any of the Work included in a Job Order or any subcontractor at any tier of such a subcontractor.

**"Substantial Completion"** means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that COUNTY can occupy and use the Project or a portion thereof for its intended purposes. The conditions of Substantial Completion that apply to a specific Job Order will be listed in the Notice to Proceed Letter for that Job Order.

**"Supplier"** means a person providing materials, supplies or equipment to be included in the Work to Contractor or any Subcontractor.

**"Technical Specifications"** means the general provisions and the detailed specifications prescribed by COUNTY describing the materials and performance required for each individual Job Order.

**"Work"** and **"Work (Construction)"** mean all labor, materials, supplies, tools, equipment, transportation, site cleanup, storage and disposal of construction debris, supervision, management, overhead and profit, bonds, insurance, licenses and permits, taxes, intellectual property royalty and license fees, all other activities and items required to perform the Work under a Job Order as described in the Scope of Work in the Job Order. Work does not include Pre-Construction Services in connection with a Job Order.

## **ARTICLE 2. JOB ORDER DEVELOPMENT**

The steps for development of a Job Order and Quotation will generally be the following:

- a. For Projects estimated under \$100,000, COUNTY will notify the selected Contractor of a new Project and may or may not schedule a site visit to explain and discuss the project. Design documents, if any, will be provided to the Contractor by the time of the site visit. Once the parties agree on the scope of the project, COUNTY will memorialize the agreement in a Job Order and deliver it to Contractor who shall have five (5) working days, unless a shorter period is specified in the Job Order, to commence construction. Unless otherwise specified by COUNTY, issuance of the Job Order shall constitute Notice to Proceed.

- b. For Projects estimated at \$100,000 or greater, the COUNTY will notify ALL Job Order Contractors under contract to PCDOT. The request shall advise all Contractors of the nature of the Work to be done and include the selection criteria and methodologies PCDOT will use to make the "best value" decision. Criteria could include lowest bid, lowest bid meeting schedule, best cost alternative(s), etc. The request letter may also include an estimate of the total dollars the COUNTY has budgeted for the Job. CONTRACTOR shall be provided an opportunity to ask questions, seek clarification and/or inspect the site, if requested. Alternatively, the COUNTY may identify in the request the date and time for a meeting or site visit to explain and discuss the Work and further refine the scope of the project. Design documents, if any, may be provided in advance or at the meeting or site visit.
- c. Upon establishment of the scope of the needed Project, each Contractor interested in performing the Job Order shall prepare its proposal for accomplishment of the Project utilizing the Contractors best estimating practices to develop a fixed, lump sum or not-to-exceed Guaranteed Maximum Contract Price to complete the Work, including any additional Pre-Construction Services (if necessary). See Article 3 for a description of required proposal items. The time for submittal of proposals for individual Projects shall not exceed five (5) working days unless approved by the COUNTY.
- d. COUNTY shall review each Contractor's proposal and may either accept the proposals or negotiate modifications to the proposals until such time the COUNTY is satisfied with each of the proposals. Such negotiations shall be limited to value alternatives of costs less than 20% of the original quotation price. Scope modifications or value alternatives that are equal to or greater than 20% shall require COUNTY to modify the original request and rebid to the benefit of all interested Contractors under this Contract.
- e. The Job Order will then be issued by COUNTY to the Job Order Contractor that submitted the best quotation (including schedule and/or value engineering alternatives), as measured by the criteria in the request for quotation. Past performance on earlier Job Orders, including past performance on cost or price control, may be used to determine award of future Job Orders.
- f. Upon issuance of each Job Order by COUNTY, the Job Order Contract will be binding upon the Contractor and COUNTY. A Job Order is considered "issued" when delivered to the Contractor or sent by facsimile copy, in which case the Job Order will be "issued" when sent to Contractor's fax number and COUNTY's fax machine prints an acknowledgement of receipt or COUNTY.

### **ARTICLE 3. JOB ORDER PROPOSAL CONTENT**

Although specific Job Orders will vary, the content of Job Order proposals provided by each Contractor under this contract will generally include the following:

- (a) The description of the Scope of the Work;
- (b) The duration of the work, including CPM schedule (if required);
- (c) The Contract Price for Work (Construction), including prices for various proposed alternatives;
- (d) The Contract Price of Pre-Construction Services by Contractor (if any);
- (e) The name of the Contractor Representative for the Project;
- (f) The Drawings and Specifications (if any) used to prepare the quotation;

- (g) Any assumptions or exclusions that qualify the Contractor's price, including how many days the proposal is valid for;
- (h) A risk analysis of the project that identifies potential risks to the cost or schedule, or other items which the Owner may need to be informed of that will impact a successful outcome;
- (i) If any Shop Drawings, Product Data and/or Samples are required for the Job Order, the date for delivery of each required item;
- (j) A statement of which, if any, of the following are required: Preconstruction Conference, Weekly Progress Meetings, Field Office, Storage Enclosure, Materials and Equipment Handling Facility, Submittals, Shop Drawings, Product Data, Equipment List, Samples, Project Manual, Schedule of Values, Construction Progress Schedule, Narrative Reports, Progress Report, Progress Charts, Progress Photographs, Materials Status Report, Construction Diagram, Construction Status Report, Operation and Maintenance Data, Operating Maintenance Instructions and Parts List, and As-Built Drawings.

Each Job Order will be interpreted to include all items reasonably necessary to complete the Project as described in the Scope of the Work of the Job Order. All Work shall be performed in a professional manner and all materials used shall be new, of the highest quality and of the type best adapted to their purpose, unless otherwise specified.

#### **ARTICLE 4. JOB ORDER NEGOTIATION**

##### **4.1 Job Order Pricing**

The Contract Price shall include all costs, including overhead, pre-construction, mobilization, indirect costs, etc., incidental to performing the work and completing the job order and with the exception of any changes in the scope of work as directed by the Owner as defined by ARTICLE 6, no additional payments will be made.

##### **4.2 Pre-Construction Services (if any)**

If CONTRACTOR is providing Pre-Construction Services, the proposal must be supported by documentation to establish that adequate involvement by Contractor in the planning, engineering and design work will be performed to satisfy the requirements of the project. Required services may include (but are not limited to) constructibility reviews, materials recommendations, alternatives analysis, development of cost and schedule estimates and tradeoffs, and similar services.

#### **ARTICLE 5. JOB ORDER MANAGEMENT**

##### **5.1 Planning, Scheduling, Monitoring**

Planning, scheduling and progress monitoring are essential functions of CONTRACTOR. If required by the Job Order, after the issuance of the Job Order CONTRACTOR shall prepare and submit to COUNTY a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The format of the Schedule of Values shall be as specified by COUNTY. In addition, if required by the Job Order, CONTRACTOR shall submit a CPM-based Construction Schedule that shall be maintained and updated for the duration of the project.

**(a) Project Management**

CONTRACTOR shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work under each Job Order with such diligence as to maintain a steady rate of progress or, if there is a Construction Progress Schedule, the rate of progress indicated on the Construction Progress Schedule, to prevent work stoppage, and to ensure completion of the Project under each Job Order within the Contract Time.

**(b) Daily Log**

CONTRACTOR shall maintain a Daily Log of construction activities using a form approved by COUNTY. CONTRACTOR shall include in the log all significant issues or problems affecting progress and completion of any Job Order.

If required in a Job Order, CONTRACTOR shall provide copies of the entries in the Daily Log to COUNTY no later than the morning of the next business day. The Daily Log does not constitute written notice to the COUNTY when such notice is required by the Contract.

**(c) Progress Schedule and Float**

If CONTRACTOR submits an original or updated schedule which shows the Work under a Job Order and/or individual milestone(s) completing earlier than required by the adjusted Final Completion Date in the Job Order, the differences between the forecasted early completion and the required Final Completion Date shall be considered Project-owned float available for use by both COUNTY and CONTRACTOR.

**5.2 Reporting**

**(a) Monthly Reporting**

If required by the Job Order, on the last business day of each calendar month, CONTRACTOR will deliver to the COUNTY a Monthly Narrative Report. The Report shall include a description of all current, issued, and in process Job Orders, the status of each and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action(s) taken or proposed.

The Report shall include for each job order the Start Date, the Final Completion Date, and, for Job Orders with more than sixty (60) days between such dates, either (A) the current Progress Schedule for the Project, or (B) the date by which CONTRACTOR is to submit a proposed Progress Schedule for approval by COUNTY.

If the Project under any Job Order is behind schedule in any month, CONTRACTOR'S Narrative Report shall indicate precisely what measures it will take in the next thirty days to put the Work back on schedule.

If requested by COUNTY, CONTRACTOR shall meet with COUNTY to review the monthly Update Report and to discuss any issues.

**(b) Contractor Responsibility**

To the extent required in the Job Order for the Project, CONTRACTOR shall be responsible to prepare, submit and maintain the daily log, CPM schedules and Narrative Reports indicated above; failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain logs, schedules reports shall be solely CONTRACTOR's responsibility and shall not be charged to COUNTY.

## **ARTICLE 6. CHANGES AND CHANGED CONDITIONS**

### **6.1 Owner Directed Changes in the Scope of Work**

By written directive at any time, COUNTY may make any changes within the general scope of the Work under a Job Order or issue additional instructions, require additional or modified Work or direct deletion of Work. CONTRACTOR shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the COUNTY in the form of a completed and executed Change Order. If CONTRACTOR proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this article, CONTRACTOR waives all rights or claims CONTRACTOR may have as a result of the change. The COUNTY's right to make changes shall not invalidate the Agreement or Job Order Contract Documents or relieve CONTRACTOR of any liability. Any requirement of notice of change to the Surety shall be the responsibility of CONTRACTOR.

## **ARTICLE 7. DELAYS AND TIME EXTENSIONS**

### **7.1 Demonstration of Delay**

It is agreed that no time extensions shall be granted nor delay damages paid by COUNTY unless the delay can be clearly demonstrated by CONTRACTOR on the basis of the updated Critical Path Schedule, cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of the Work or other reasonable means.

### **7.2 Application of Float**

Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Final Completion Date. Since float time within the construction schedule is jointly owned, it is acknowledged that COUNTY-caused delays on the Project may be offset by COUNTY-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, CONTRACTOR shall not be entitled to receive a time extension or delay damages until all COUNTY-caused time savings are exceeded and the Final Completion Date or milestone date is also exceeded.

## **ARTICLE 8. PERFORMANCE MEASUREMENT**

### **8.1 Performance Assessment**

Promptly after final completion of the Work under each Job Order, COUNTY will complete a written evaluation of CONTRACTOR's performance of the Work. The evaluation shall consist of completion by COUNTY of the Performance Quality Evaluation Form attached as **Exhibit "1"** to these **SPECIAL CONDITIONS**.

### **8.2 Feedback**

The completed Performance Evaluation will be shared with CONTRACTOR as a means of providing feedback regarding CONTRACTOR's cost, schedule and quality performance. CONTRACTOR may submit additional information, comment, recommendations or rebuttal for association with the Performance Evaluation.

### **8.3 Comparative Assessment**

CONTRACTOR's cost, schedule and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated Contractors. The results of these comparisons will be provided to CONTRACTOR.

CONTRACTOR understands that these assessments will necessarily involve significant subjectivity. CONTRACTOR agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form whatsoever.

#### **8.4 Consideration in Renewal**

CONTRACTOR's record of cost, schedule and quality performance and comparative assessments shall be significant considerations in the COUNTY's determination whether to renew CONTRACTOR's participation in the Agreement. CONTRACTOR agrees that any determination by COUNTY not to renew its participation based on performance will be at the sole discretion of COUNTY.

### **ARTICLE 9. SUBCONTRACTORS**

#### **9.1 Subcontractor Selection**

CONTRACTOR will select Subcontractors in accordance with the Subcontractor Selection Plan incorporated into this Contract by reference.

#### **9.2 Subcontracts**

(a) CONTRACTOR agrees to deliver to each Subcontractor and to cause each Subcontractor to deliver to each sub-subcontractor a copy of this Agreement and the Job Order Contract Documents relating to the Work of the Subcontractor or sub-subcontractor. The Contractor agrees to include in its contract with each Subcontractor all provisions of the Agreement and Job Order documents required to be included in those contracts and to cause its Subcontractors to include the same provisions in their contracts with their sub-subcontractors at all tiers.

(b) Each Subcontract, or other Agreement, with any subcontractor for any job order shall include the address or location of the work.

#### **9.3 Assignment Upon Termination**

CONTRACTOR hereby assigns to COUNTY (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by CONTRACTOR for performance of any part of the Work under each Job Order, which assignment will be effective upon termination of the Contract by the COUNTY and only as to those subcontracts and purchase orders which the COUNTY assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by CONTRACTOR to the COUNTY and its assigns. Such assignment is part of the consideration to COUNTY for entering into the Contract with CONTRACTOR and may not be withdrawn prior to final completion of the Work under each Job Order.

### **ARTICLE 10. TERMINATION FOR CAUSE**

Anything in the Contract Documents to the contrary notwithstanding, any termination of this Agreement shall automatically terminate all Job Orders as to which the Work is not complete, except that upon any termination of this Contract, COUNTY may elect by written notification to CONTRACTOR to continue in effect any or all then uncompleted Job Orders in which event this Agreement shall continue in effect as to each continued Job Order and shall terminate upon completion of the last such Job Order.

Anything in the Agreement to the contrary notwithstanding, (i) all indemnification provisions, reimbursement provisions and payment provisions shall survive termination of this Agreement under this Article and shall continue in effect indefinitely without termination, and (ii) all guarantee and warranty provisions and all

provisions in the Agreement Documents requiring CONTRACTOR to correct any Work not in accordance with the relevant Job Order Documents shall not terminate upon termination of this Agreement and shall continue in effect thereafter in accordance with the terms of each such provision.

#### **10.1 Cause for Termination**

In addition to the termination rights of the COUNTY in **ARTICLE XV – TERMINATION OF AGREEMENT OR JOB ORDER FOR DEFAULT** of the Agreement between COUNTY and Contractor, the COUNTY may terminate any or all Job Orders and/or the overall Job Order Agreement at the election of COUNTY, upon the occurrence of any one or more of the following events:

- (a) If CONTRACTOR refuses or fails to prosecute the Work under any Job Order with such diligence as will ensure its completion within the Contract Time for that Job Order; or if the Contractor fails to complete the Work under any Job Order within the Contract Time for that Job Order;
- (b) If CONTRACTOR or any of its key Subcontractors under any Job Order is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if CONTRACTOR or any of its key Subcontractors under any Job Order or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning CONTRACTOR or any of its key Subcontractors under any Job Order, or if a trustee or receiver is appointed for CONTRACTOR or any of its key Subcontractors under any Job Order or for any of CONTRACTOR's property on account of CONTRACTOR or a key Subcontractor under any Job Order, and, in each case, CONTRACTOR or its successor in interest or its respective key Subcontractor under any Job Order does not provide reasonably adequate assurance of future performance in accordance with the Contract Documents within 10 days after receipt of a request for assurance from the COUNTY;
- (c) If CONTRACTOR persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;
- (d) If, as to any Job Order, CONTRACTOR fails to make prompt payments to Subcontractors or Suppliers at any tier, or for labor, materials or equipment;
- (e) If CONTRACTOR fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
- (f) If, as to any Job Order, CONTRACTOR fails to follow any reasonable instructions by the COUNTY, which are consistent with the Construction Documents;
- (g) If, as to any Job Order, CONTRACTOR performs Work which deviates from the Job Order Documents and neglects or refuses to correct rejected Work; or
- (h) If, as to any Job Order, Contractor otherwise violates in any material way any provisions or requirements of this Agreement or any Job Order Contract Documents.

#### **10.2 Notice and Cure Period**

If COUNTY determines that one or more events of default described in **Article 10.1** has occurred, the COUNTY may elect to terminate any or all Job Orders and/or terminate CONTRACTOR's participation in the overall Agreement. To do this, the COUNTY must first give CONTRACTOR and its Surety written notice of the events of default ("**Notice of Default**") and allow CONTRACTOR and its Surety ten (10) calendar days to cure the events of default. If the events of default are not cured within the ten (10) calendar days, COUNTY may terminate any or all Job Orders and/or terminate CONTRACTOR's participation in the overall Agreement by written notice to Contractor and its Surety.

### 10.3 Completion of Terminated Work

- (a) If any Job Order or participation in the Agreement is terminated, COUNTY may take over the Work under terminated Job Orders and prosecute them to completion, by contract or otherwise, and may exclude CONTRACTOR from the sites. The COUNTY may take possession of the Work under the terminated Job Orders and of all of CONTRACTOR's tools, appliances, construction equipment, machinery, supplies and plant which may be on the site of the Work for each terminated Job Order, and use the same to the full extent they could be used by CONTRACTOR, all without liability to CONTRACTOR. In exercising the COUNTY's right to prosecute the completion of the Work, the COUNTY may also take possession of all materials and equipment stored at the site or for which the COUNTY has paid CONTRACTOR but which are stored elsewhere. The COUNTY may use the foregoing items to finish the Work as the COUNTY deems expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.
- (b) If any Job Order is terminated, the COUNTY may demand that CONTRACTOR's surety take over and complete the Work under the Job Order. The COUNTY may require that in so doing, the CONTRACTOR's surety not utilize CONTRACTOR in performing the Work. Upon the failure or refusal of CONTRACTOR's surety to take over and begin completion of the Work within 20 days after the demand, the COUNTY may take over the Work and prosecute it to completion as provided above.
- (c) As to any terminated Job Order, COUNTY shall have the option of requiring any, all or none of the Subcontractors and Sub-subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.
- (d) If COUNTY takes over the Work under any terminated Job Order, unexecuted orders entered into by CONTRACTOR for performance of any part of the Work will be effective upon acceptance by COUNTY in writing and only as to those subcontracts and purchase orders which the COUNTY designates in writing.

### 10.4 Payment for Terminated Work

- (a) If, as to any terminated Job Order, the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work and all COUNTY damages including, without limitation, liquidated damages and compensation for additional professional and consultant services ("**COUNTY's Termination Costs**"), such excess shall be used to pay CONTRACTOR for the Work it performed and for which CONTRACTOR has not been paid previously and the amount shall be determined using the Tasks, Unit Prices, Coefficients, and Other Tasks and Other Prices included in the Job Order. If, as to any terminated Job Order, the COUNTY's Termination Costs exceed the unpaid balance of the Contract Price, the Contractor shall immediately upon demand pay the difference to the COUNTY or the COUNTY may setoff the amount against any other amounts owing to Contractor for any cause whatsoever, whether current or future. In exercising the COUNTY's right to prosecute the completion of the Work under any terminated Job Order, the COUNTY shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs to be incurred in completing the Work, and the COUNTY shall not be required to obtain the lowest figure for Work performed in completing the Project. If the COUNTY holds a competitive procurement for remedial Work or completion of the Work under a terminated Job Order, CONTRACTOR shall not be eligible for the award of such contracts.
- (b) CONTRACTOR shall be liable for any damage to the COUNTY resulting from the termination or from CONTRACTOR's refusal or failure to complete the Work under any terminated Job Order and for all costs necessary for repair and completion of the Project under each terminated Job Order over and

beyond the Contract Price. CONTRACTOR shall be liable for all legal fees and costs required to enforce the provisions of the Agreement and/or Job Order Documents.

#### **10.5 Nonexclusive Remedies**

In the event any Job Order or CONTRACTOR's participation in the Agreement is terminated, the termination shall not affect any other rights of the COUNTY against CONTRACTOR. The rights and remedies of COUNTY under this **Article 10** are in addition to any other rights and remedies provided by law or under the Agreement or Job Order Contract Documents. Any retention or payment of monies to CONTRACTOR by COUNTY will not release CONTRACTOR from liability.

#### **10.6 Erroneous Termination for Cause**

If any Job Order or participation in the overall Agreement is terminated under this **Article 10**, and it is determined for any reason that there was no default, the termination shall be deemed a Termination for Convenience of the COUNTY under **Article 11**.

### **ARTICLE 11. TERMINATION FOR CONVENIENCE OF THE COUNTY**

The COUNTY, by written notice to CONTRACTOR, may terminate any Job Order or the overall Agreement in whole or in part if sufficient appropriated or other funds are not available or the COUNTY determines, in the sole discretion of the COUNTY, that such termination is in the COUNTY's best interest. In such case, CONTRACTOR shall be paid for all Work under each Job Order for which CONTRACTOR has not been paid previously. CONTRACTOR shall also be paid reasonable termination expenses. In no event shall such payments as to any Job Order, exclusive of termination expenses, exceed the total Contract Price for the Job Order as reduced by payments previously made to CONTRACTOR and as further reduced by the value of the Work as yet not completed. Since profit and overhead are built into the Contract Price for each Job Order, CONTRACTOR shall not be entitled any additional profit or overhead on Work performed and in addition, Contractor shall not be entitled to any profit or overhead on Work not performed.

## EXHIBIT '1' TO APPENDIX "C"

## PERFORMANCE QUALITY EVALUATION FORM

FOR OFFICIAL USE ONLY (WHEN COMPLETED)

<b>PERFORMANCE EVALUATION (CONSTRUCTION)</b>				<b>1. CONTRACT NUMBER</b>  <b>2. CEC NUMBER</b>	
IMPORTANT: Be sure to complete Part III - Evaluation of Performance Elements on reverse.					
<b>PART I - GENERAL CONTRACT DATA</b>					
<b>3. TYPE OF EVALUATION (X one)</b> <input type="checkbox"/> INTERIM (List percentage _____ %) <input type="checkbox"/> FINAL <input type="checkbox"/> AMENDED				<b>4. TERMINATED FOR DEFAULT</b> <input type="checkbox"/>	
<b>5. CONTRACTOR (Name, Address, and ZIP Code)</b>  				<b>6.a. PROCUREMENT METHOD (X one)</b> <input type="checkbox"/> SEALED BID <input type="checkbox"/> NEGOTIATED	
				<b>b. TYPE OF CONTRACT (X one)</b> <input type="checkbox"/> FIRM FIXED PRICE <input type="checkbox"/> COST REIMBURSEMENT	
				<input type="checkbox"/> OTHER (Specify) _____	
<b>7. DESCRIPTION AND LOCATION OF WORK</b>					
<b>8. TYPE AND PERCENT OF SUBCONTRACTING</b>					
<b>9. FISCAL DATA</b> ▶		a. AMOUNT OF BASIC CONTRACT \$	b. TOTAL AMOUNT OF MODIFICATIONS \$	c. LIQUIDATED DAMAGES ASSESSED \$	d. NET AMOUNT PAID CONTRACTOR \$
<b>10. SIGNIFICANT DATES</b> ▶		a. DATE OF AWARD	b. ORIGINAL CONTRACT COMPLETION DATE	c. REVISED CONTRACT COMPLETION DATE	d. DATE WORK ACCEPTED
<b>PART II - PERFORMANCE EVALUATION OF CONTRACTOR</b>					
<b>11. OVERALL RATING (X appropriate block)</b> <input type="checkbox"/> OUTSTANDING <input type="checkbox"/> ABOVE AVERAGE <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> MARGINAL <input type="checkbox"/> UNSATISFACTORY (Explain in Item 20 on reverse)					
<b>12. EVALUATED BY</b>					
a. ORGANIZATION (Name and Address (Include ZIP Code))				b. TELEPHONE NUMBER (include Area Code)	
c. NAME AND TITLE		d. SIGNATURE		e. DATE	
<b>13. EVALUATION REVIEWED BY</b>					
a. ORGANIZATION (Name and Address (Include ZIP Code))				b. TELEPHONE NUMBER (include Area Code)	
c. NAME AND TITLE		d. SIGNATURE		e. DATE	
<b>14. AGENCY USE (Distribution, etc.)</b>					

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EXCEPTION TO SF 1420 APPROVED BY GSA/IRMS 6-94  
Adobe Professional 7.0

**FOR OFFICIAL USE ONLY (WHEN COMPLETED)**

**PART III - EVALUATION OF PERFORMANCE ELEMENTS**

N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY													
15. QUALITY CONTROL							16. EFFECTIVENESS OF MANAGEMENT						
	N/A	O	A	S	M	U		N/A	O	A	S	M	U
a. QUALITY OF WORKMANSHIP							a. COOPERATION AND RESPONSIVENESS						
b. ADEQUACY OF THE CQC PLAN							b. MANAGEMENT OF RESOURCES/ PERSONNEL						
c. IMPLEMENTATION OF THE CQC PLAN							c. COORDINATION AND CONTROL OF SUBCONTRACTOR(S)						
d. QUALITY OF QC DOCUMENTATION							d. ADEQUACY OF SITE CLEAN-UP						
e. STORAGE OF MATERIALS							e. EFFECTIVENESS OF JOB-SITE SUPERVISION						
f. ADEQUACY OF MATERIALS							f. COMPLIANCE WITH LAWS AND REGULATIONS						
g. ADEQUACY OF SUBMITTALS							g. PROFESSIONAL CONDUCT						
h. ADEQUACY OF QC TESTING							h. REVIEW/RESOLUTION OF SUBCONTRACTOR'S ISSUES						
i. ADEQUACY OF AS-BUILTS							i. IMPLEMENTATION OF SUBCONTRACTING PLAN						
j. USE OF SPECIFIED MATERIALS													
k. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER													
<b>17. TIMELY PERFORMANCE</b>							<b>18. COMPLIANCE WITH LABOR STANDARDS</b>						
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE							a. CORRECTION OF NOTED DEFICIENCIES						
b. ADHERENCE TO APPROVED SCHEDULE							b. PAYROLLS PROPERLY COMPLETED AND SUBMITTED						
c. RESOLUTION OF DELAYS							c. COMPLIANCE WITH LABOR LAWS AND REGULATIONS WITH SPECIFIC ATTENTION TO THE DAVIS-BACON ACT AND EEO REQUIREMENTS						
d. SUBMISSION OF REQUIRED DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS							<b>19. COMPLIANCE WITH SAFETY STANDARDS</b>						
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES							a. ADEQUACY OF SAFETY PLAN						
g. WARRANTY RESPONSE							b. IMPLEMENTATION OF SAFETY PLAN						
							c. CORRECTION OF NOTED DEFICIENCIES						
<b>20. REMARKS</b> (Explanation of unsatisfactory evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. These data must be in sufficient detail to assist contracting officers in determining the contractor's responsibility. Continue on separate sheet(s), if needed.)													

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## APPENDIX "D" SPECIAL PROVISIONS

**406-5 BASIS OF PAYMENT** the first paragraph of the Standard Specifications is revised to read:

The accepted quantities of asphaltic concrete, measured as provided above, will be paid for under the appropriate bid items at the contract unit price or adjusted unit price, complete-in-place.

Due to fluctuating asphalt cement prices the unit price for asphaltic concrete will be adjusted based on the criteria and formula below.

The price for bituminous material or asphalt cement used in the asphalt concrete mixture will be determined monthly by the Agency based on the selling prices of asphalt cement published by the Arizona Department of Transportation, Contracts and Specifications Section (ADOT memorandum). The established price for bituminous material used in the asphaltic concrete mixture will be made available by the Agency upon request.

The "initial cost" for asphalt cement of all types, grades, etc. on projects will be the established price based on the ADOT memorandum for the selling prices during the month the bids are opened.

An adjustment in compensation will be made for either an increase or decrease in the price of asphalt cement as shown in the latest memorandum, current as of the date of use, as compared to the "initial cost".

The tons of asphalt cement that are paid for on an invoice basis to which the adjustment will be applicable are the tons which have been delivered to the project and subsequently incorporated into the work. The adjustment will be applicable on the date of use.

No additional compensation will be made for any additional or increased charges, costs, expenses, taxes, etc., which the contractor may have incurred since the time of bidding and which may be the result of any increase in the "initial cost" of asphalt cement.

After the expiration of the specified completion time set forth in the contract or as may be extended in accordance with the provisions of Subsection 108-8 of the Standard Specifications any adjustment in compensation made for asphalt cement incorporated into the work will be on the basis of the price of asphalt cement shown in the latest memorandum on the date of the expiration of the specified completion time, as hereinbefore specified.

Adjustment Formula:

**("Date of Use" cost of asphalt cement - "Initial" cost of asphalt cement) x % asphalt cement in mix design**

<b>EXAMPLE:</b>	"Initial" cost at bid opening	=	\$100 per ton
	"Date of Use" cost	=	\$120 per ton
	% asphalt cement in mix design =	5.2	

Unit Price adjustment to Asphaltic Concrete	= (120-100) x 0.052
	= 20 x 0.052
	= \$1.04 increase in the contract unit price for asphaltic concrete.