

## JOB ORDER CONTRACTING AGREEMENT

This Job Order Contracting Agreement (the "Agreement") is entered into by and between the City of Austin, Texas (the "Owner") and \_\_\_\_\_ (the "Contractor") (sometimes referred to individually as a "Party" or collectively as the "Parties") for the Project.

The overall Project is for the performance of various Job Order Assignments. The Project will require a wide variety of maintenance, repair, alteration, renovation, remediation, or minor construction tasks with pre-determined unit prices. Various trades will consist of, but not limited to, electrical, mechanical, plumbing, painting, carpentry, drywall, and roofing. Work locations may include the Austin Bergstrom International Airport, City office buildings, Austin Parks and Recreation buildings, and other City owned or leased building facilities (the "Facilities"). Minor construction may include the demolition and/or construction of workspace within an existing Facility. Repair is defined as Work that involves the repair of a broken system, component, or sub-component of a building such as doors, electrical outlets, plumbing, flooring, sheetrock, and/or air conditioning systems, etc. Renovation is defined as Work that involves the restoration of an office, floor, system or component of a system. Alteration is defined as Work that involves changing a structure in terms of lay-out or function. Maintenance is defined as work necessary to maintain the functionality of a facility. Remediation is defined as work necessary to correct or remedy non-complying site conditions. "Facility," means a "building," the design and construction of which is governed by accepted building codes or a structure or land whether improved or unimproved, that is associated with a building,

The Work will consist of several component sub-projects or Job Order Assignments, as defined below, for the Facilities. It is agreed and understood that the term "Work" will be construed to include the entire Project and each of the component sub-projects as the context reasonably requires.

This contract is for a two-year period with an option to renew the contract term annually for three (3) additional years. Component sub-projects constituting portions of the Work will be authorized throughout the contract period. Construction cost for the Program in the initial term is estimated at \$6,000,000.00, which will be divided among the Job Order Contracts.

As described below, the Owner's Representative and the Contractor will agree on the scope of Work, the schedule for the Work, liquidated damages, and the cost of the Work based upon the Unit Prices and the actual quantities of the Work prior to the start of Work.

### ARTICLE 1. DEFINITIONS

1.1 Job Order Contract ("JOC") is a contracting method that allows for services for the maintenance, repair, alteration, renovation, remediation, or minor construction of a Facility, where the work is for indefinite time and indefinite quantities and where Job Order Assignments are awarded substantially on the basis of pre-described and pre-priced tasks.

1.2 Job Order Assignment ("JOA") is the authorization for specific work to be performed under this Contract. Each individual Job Order Assignment becomes, in effect, a

unit price contract with an established not-to-be-exceeded cost and is administered accordingly.

1.3 Unit Price Book ("UPB") is a published comprehensive list of construction line items with pre-determined prices that will be paid per unit of each line item. For this contract, the Bare Costs total in the latest R.S. Means Facilities Construction Cost Data<sup>©</sup> will be used as the UPB. The Austin City Cost Index "total weighted average" will be applied to the R.S. Means prices on each Job Order. The UPB is incorporated in and made a part of this agreement by reference. Contract wage rates are specified in Section 00830.

1.4 Coefficient - A numerical factor that defines how much the Contractor will be paid to cover overhead, profit, and any and all other costs that are not included in the UPB line item prices. Depending on several variables, coefficients can be either greater than or less than one. For example, a coefficient of 1.08 means that the Contractor will be paid 8% more than the sum of the UPB prices on each Job Order that is issued.

1.5 General – The Contract Documents shall be read together and construed so that what is required by one is required by all and that common sense interpretations are made to account for the Job Order contracting method, which will consist of multiple Job Order Assignments, each of which will be separately administered and accounted for under this Job Order Contracting Agreement and the other Contract Documents. In that regard, any reference to a single Project anywhere in the Contract Documents will be construed to mean each individual Job Order Assignment and the overall Work as the context requires. For example, the "Contractor" may also be referred to as the "Job Order Contractor" or the "Proposer," and it is reasonably anticipated that the Contractor will submit multiple "proposals" rather than "bids", and the schedule and schedule of values will be developed based on each Job Order Assignment and the trade summary breakdowns contained in the UPB.

## ARTICLE 2. JOB ORDER ASSIGNMENTS

2.1 Overview of Contractor Responsibilities. During the term of this Agreement, the City will identify individual maintenance, repair, alteration, renovation, remediation, or minor construction requirements and issue Job Order Assignment proposal requests for the Contractor to meet those requirements. The Contractor will be required to schedule and attend a site visit, develop a proposal and submit it to the City for approval, create a line-item cost estimate using the UPB and a computerized cost estimating system. Once a JOA proposal is approved and notice to proceed is issued by the City, the Contractor will provide all materials, labor, tools, equipment, supervision, project management, and quality control to successfully complete the Job Order Assignment in the required time frame.

2.2 Job Order Assignments. The procedure for establishing each Job Order Assignment is as follows:

.1 Proposal Request: Upon identifying a specific Job Order Assignment, the OWNER will issue a written "Proposal Request," in substantially the form attached hereto as "Attachment 1", to the Contractor describing the scope of work, proposed schedule, and other requirements for pricing of the items of Work by the Contractor. Each Proposal request will also contain any JOA-specific revisions to Section 00810JOC Supplemental General Conditions.

.2 Contractor Proposal. Within timeframe specified by Owner not to exceed ten (10) working days of receiving the Proposal request, the Contractor shall provide a written Proposal for the JOA to the Owner. The Contractor shall price each item of work in strict compliance with the pricing provisions of this Agreement. The Proposal shall include required bonds and insurance, if applicable, a Subcontractor Utilization Form (SUF) identifying compliance with subsection 5.6, MBE/WBE Compliance, and a project schedule. The proposal must be signed by a representative of the Contractor, who is authorized to execute contracts and Proposals on behalf of the Contractor.

.3 Owner Review of Proposal. The Owner will notify the Contractor within five (5) working days or sooner if the Proposal is acceptable. If revisions are needed, the Contractor will make the required revisions and resubmit the Proposal to the Owner within timeframe specified by Owner not to exceed five (5) working days of such notice. The Contractor is not authorized to perform any work until the specific Job Order Assignment is approved and issued for construction by the City. In any event, the City reserves the right to reject any and all Job Order Assignment Proposals in its complete discretion and to perform the Work itself, or through another contractor or another delivery method. No specific amount of Work is guaranteed to the Contractor within the term of this Agreement.

.4 Proposal Acceptance and Notice to Proceed. The accepted Proposal will be counter-signed by an authorized representative of the Owner, will be attached to the Owner's JOA Proposal Request, and will be returned to the Contractor within five (5) working days or sooner of Owner approval with an incorporated Notice to Proceed authorizing the Contractor to proceed with the Job Order Assignment. The Contractor shall begin work on the date specified in Notice to Proceed.

.5 Scope of Work. The terms of the Job Order Assignment issued in response to the request for proposal and the proposal will govern all of the work issued for construction. It is the obligation of the Contractor to perform the Work issued for construction within the time stated in the Job Order Assignment. The scope of work under the Assignment includes all Work specifically identified by the City and reasonably inferable there from. The City will endeavor to issue all required Work in one of its facilities at a single time, but this may not be possible and it may not be possible for the Contractor to perform all Work at a single Facility within a single mobilization.

.6 Quality Control. The Contractor will be responsible for quality control and must perform all work in accordance with drawings, applicable codes, the construction documents, and the Contractor's quality control plan submitted with its Proposal to the RFP. The City will periodically observe the Work, prepare punch lists when required, and participate in a Substantial Completion and Final Completion inspection prior to acceptance and approval for final payment.

.7 Daily Reports. The Contractor shall prepare daily progress reports on each active Job Order Assignment and submit them electronically or in paper form to the City at the end of each work day. The City will provide the form to be used for the daily reports.

.8 Cost Estimating Software. The Contractor must use the latest version of R.S. Means CostWorks Building Construction Cost Data<sup>®</sup> and R.S. Means CostWorks Estimator<sup>®</sup> software and submit all cost proposals electronically using this software.

.9 Professional Services. In the event that professional services (for example: registered professional land surveyors, professional architects and professional engineers) are required in the limited context of a subsidiary component of the Work for any Job Order

Assignment, for example as necessary to lay out the site of the Work or to provide a trench safety plan, Contractor shall secure such services pursuant to the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code, using the qualifications based selection process prescribed in that Chapter.

### ARTICLE 3 – COMPENSATION

3.1 Estimated Contract Value. The total funding authority for the Job Order Contracting Program will be distributed among the selected firms. The City is not obligated to issue the prorata estimated amount of compensation to any of the selected contractors. The Contractor will not be entitled to recalculate the prices in the UPB or the Coefficient because of the amount of the Work issued under this Agreement.

3.2 Estimated Job Order Assignment Values. The estimated minimum Job Order Assignment will be \$50,000.00 and the estimated maximum Job Order Assignment will not exceed \$400,000.00. Job Order Assignments of less than or greater than the estimated amounts may be issued in a single Job Order Assignment for more than one Facility, and more than one Job Order Assignment may apply to a single Facility.

3.3 Compensation. Unless OWNER agrees to different terms for a specific Job Order Assignment, for Job Order Assignments of less than \$100,000, no moneys will be paid to Contractor until final completion and acceptance of the Job Order Assignment by Owner. For Job Order Assignments of \$100,000 or greater, Contractor will be paid in accordance with Article 14 of the 00700 General Conditions.

3.4 Funding Out. This Agreement will be construed under and according to the laws of the State of Texas and other applicable federal and municipal laws and ordinances, as of the date of this Agreement, and specifically including the provisions of Article XI, Section 5, of the Texas Constitution. As such, this Agreement is contingent upon approval by the Austin City Council of a City operating budget for each City fiscal year which identifies sufficient funds that have been appropriated for payment of the Owner's obligations under this Agreement. In the event that such funding is not so appropriated and approved, this Agreement shall terminate automatically on the last day in the fiscal year for which sufficient funds were budgeted and appropriated for this Agreement, subject to the following provisions. Any action or termination due to non-appropriation of funds will not be construed as a default under this Agreement. Notwithstanding the foregoing, in the event that this Agreement would terminate due to non-appropriation, Contractor shall, upon notice from the Owner, either continue to prosecute the remaining Work under the current Job Order Assignment(s) subject to the availability of funding or immediately wind down operations and mitigate all associated costs in doing so in strict compliance with instructions from the Owner.

### ARTICLE 4. CONTRACT TIME

4.1 Initial Term and Option. Job Order Assignments may be issued at any time during the two (2) year initial term of this Agreement provided that for any Job Order Assignment issued prior to the expiration of the initial term of the Agreement, the contract time will be extended through the completion date of that Job Order Assignment. The City in its complete discretion may extend the term of this Agreement annually for three (3) additional years term, if sufficient funds are available at the end of initial contract term or if additional funds are appropriated.

4.2 Job Order Assignment Schedule. The estimated completion time for a Job Order Assignment will be 90 days from the issuance of notice to proceed, unless otherwise specified by the City. Contractor shall provide a proposed schedule for the Work covered by a Job Order Assignment to the City for approval with the JOA Proposal, including identification of the days and times the Contractor anticipates being at the Facility. In an emergency or other unusual situation, the City may require that the Job Order Assignment be completed on an expedited basis. Expedited Job Order Assignment must be completed within the schedule and for the compensation to be agreed to by the City and Contractor.

4.3. Extended Term. At the end of the initial two-year term of this Agreement, The City reserves the right to review the Coefficient pricing and to negotiate an adjustment to the Coefficient pricing for any extension of the contract time. However, the City is in no way obligated to extend the contract time past the initial term and any future decision to do so will be entirely at the discretion of the City.

4.4 Job Order Assignment Schedules. Each Job Order Assignment must start on the date specified in Owner's Notice to Proceed for the Assignment and be completed by the scheduled completion dates set forth in the Job Order Assignment. The scheduled completion dates are subject to adjustment only in accordance with the 00700 General Conditions of Contract.

4.5 Time is of the Essence. Owner and Contractor mutually agree that time is of the essence with respect to the commencement and completion dates and times set forth in the Job Order Assignment.

4.6 Liquidated Damages. Contractor agrees that, if Final Completion of a Job Order Assignment is not attained by the Scheduled Assignment Final Completion Date for a Job Order Assignment, Owner will suffer damages, which are difficult to estimate, determine and accurately specify. Therefore the Parties agree that, if Final Completion of a Job Order Assignment is not attained by the Scheduled Assignment Final Completion Date for that Assignment, Owner will be damaged thereby and Contractor will pay Owner the amount specified in the Job Order Assignment, not as a penalty, but as liquidated damages for each day that Assignment Final Completion is extended.

4.7 Warranty Period. The warranty period for each Job Order Assignment will commence on the date of Final Completion of the Job Order Assignment and continue for one calendar year thereafter. For Job Order Assignments in the amount of \$100,000 or more, the performance bond will remain in place for the applicable warranty period.

## ARTICLE 5. JOB ORDER CONTRACTOR STATUS AND REPRESENTATIONS

5.1 Contractor Duties. Contractor agrees that Owner is entering into this Agreement in reliance on Contractor's special and unique abilities with respect to job order contracting or indefinite delivery/indefinite quantity project delivery. The Contractor accepts the relationship of trust and confidence established by this Agreement. Contractor agrees to use its good faith best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the prevailing standards of Contractor's profession and business. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent its performance of the Work required hereunder.

5.2 Representations. The Contractor warrants, represents, covenants, and agrees that all of the Work to be performed by the Contractor will be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project. The City reserves the right to decrease or withhold Job Order Assignments based on Contractor's performance.

5.3 Licenses and Registrations. The Contractor warrants that it and its employees and subcontractors have any and all licenses and registrations required for the performance of the Work.

5.4 Efficiency. The Contractor agrees to furnish business administration and superintendence in the performance of the Work in the best and most efficient way and in the most expeditious and economical manner consistent with the interests of Owner.

5.5 No Third Party Liability and Waiver of Attorney's Fees. Except for the obligation of Owner to pay Contractor hereunder and to perform certain other obligations hereunder, Owner will have no liability to Contractor or to any third party claiming through or under Contractor by reason of the execution or performance of this Agreement or the Contract Documents. In addition, neither Owner, nor its agents, officers, and employees will have any personal liability to Contractor or to any third party claiming through or under Contractor by reason of the execution or performance of this Agreement or the Contract Documents. In consideration of the award of this Contract and in consideration of the Owner's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding alternative dispute resolution proceeding or any litigation arising out of or connected to this Contract.

5.6 MBE/WBE Compliance. Contractor shall comply with the Owner's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapter 2-9-A of the City Code, as amended. With each Job Order Assignment Proposal, Contractor must provide a MBE/WBE Subcontractor Utilization form identifying compliance with MBE/WBE Compliance Plan. Failure to use a subcontractor listed in the Contractor's Compliance Plan for a scope of work that materializes on a Job Order Assignment without prior approval from SMBR may result in a violation of the program in accordance with Chapter 2-9A Construction of the City Code.

## ARTICLE 6. CONTRACT DOCUMENTS

6.1 The Contract Documents are to be comprised of the following:

- .1 All amendments and Change Orders to this Agreement, including the Job Order Assignment Request for Proposals Documents and the Contractor's Response to Job Order Assignment Request for Proposals of Owner;
- .2 This Agreement, including all exhibits and attachments;
- .3 The Supplemental General Conditions to the General Conditions of Contract;
- .4 The General Conditions of Contract;
- .5 The Construction Documents prepared and approved in accordance with this Agreement, the Scope of Work and the General Conditions of Contract; and
- .6 Other documents contained in the Project Manual and not otherwise specifically referenced above;

The Contract Documents are intended to permit the Parties to complete all Job Order

Assignments and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price(s). The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed above.

6.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract, unless otherwise specified herein.

## ARTICLE 7. PAYMENT

7.1 Basis of Payment. Owner shall pay Contractor no more than once a month. The Contractor must submit individual pay applications for each separate Job Order Assignment. The amount to be paid shall be based on the Work completed at the applicable agreed upon Job Order Assignment line item costs extended for the quantities used or expended. The Contractor's Coefficient Factor (EXHIBIT A, Cost Proposal Form, Section 00300JOC) shall then be multiplied by the subtotal to determine the amount to be paid.

7.2 Excluded Costs. Any costs included in the Contractor's Coefficient Factor must be excluded from Job Order Assignment line item costs. The following costs must also be excluded from the amount to be paid by Owner:

- .1 Legal and administrative costs to review and negotiate these Contract Documents.
- .2 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Contractor.
- .3 Costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with that of Owner and Owner's Third Party Contractors.
- .4 Costs resulting from the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- .5 Costs related to Contractor's indemnification obligations pursuant to the 00700 General Conditions.
- .6 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- .7 Any cost arising out of the fault or negligence of Contractor, its Subcontractors or consultants, or any person or entity for whom they may be liable, including, without limitation, costs related to unacceptable Work, materials or equipment, and damage to persons or property.
- .8 Liquidated or actual damages imposed by Owner for failure of Contractor to complete the Work on or before each Job Order Assignment Final Completion Date.
- .9 Any and all costs not specifically authorized herein.

## ARTICLE 8. INSURANCE AND BONDS

8.1 Insurance. Contractor shall procure, in accordance with Article 5 of the General Conditions of Contract and the Supplemental General Conditions the specific insurance coverage requirements applicable to this Project or to a particular Job Order Assignment as set forth in the Supplemental General Conditions, provided that there shall be no exclusions for the Job Order Contracting method described herein in any of the policies provided hereunder or any such exclusions shall be specifically deleted.

8.2 Bonds and Other Performance Security. Performance and payment bonds for a Job Order Assignment will be specified by OWNER in the Job Order Assignment and shall be executed on forms furnished by OWNER. Performance bonds will be required for Job Order Assignments of \$100,000 or greater; payment bonds will be required for Assignments of \$50,000 or greater. Each bond shall be issued in an amount of one hundred percent (100%) of the Job Order Assignment, as stated in the Assignment made by OWNER, by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.

## ARTICLE 9. REPRESENTATIVES OF THE PARTIES

### 9.1 Owner's Contract Manager and Representatives

.1 Owner designates the individual listed below as its Owner's Contract Manager which individual has the authority and responsibility for managing this Agreement, for issuing Job Order Assignment Proposal Requests, for reviewing Job Order Assignment Proposals, for reviewing Contractor's payment applications, for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract, and for performing other administrative tasks associated with the Job Order Contracting Program.

Scott K. Hilton, Sr., JOC Contract Administrator  
City of Austin, Contract Management Department  
500 Barton Springs Road, Suite 1045  
Austin, Texas 78704  
(512) 974-7054

.2 In addition, a Project Manager shall be designated as the "Owner's Representative" for each Job Order Assignment to carry out the responsibilities set forth in Section 8.1 of the General Conditions of the Contract for the Assignment including authorizing Contractor's payment applications.

### 9.2 Contractor's Representative

.1 Contractor designates the individual listed below as its Representative ("Contractor's Representative"), which individual has the authority and responsibility set forth in Section 6.1.2 of the General Conditions of Contract and has the authority and responsibility for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract. Identify individual's name, title, address and telephone numbers.

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

In executing this Agreement, Owner and Contractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and the



necessary legal approvals to execute this Agreement, and perform the services described herein.

Executed in multiple counterparts, to be effective as of the later date set forth below.

Contractor

\_\_\_\_\_, Inc., a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_, Authorized Representative

Date: \_\_\_\_\_, 2012

Owner

City of Austin, Texas

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_, Authorized Representative

Date: \_\_\_\_\_, 2012

Approved as to Form:

By: \_\_\_\_\_  
Assistant City Attorney