

MARY BETH BOWMAN
DIRECTOR OF COMMERCE
DEPARTMENT OF COMMERCE
AND GOVERNMENT AFFAIRS
CITY OF NORTH LITTLE ROCK, ARKANSAS



120 Main Street, North Little Rock, AR 72114
P.O. Box 5757 North Little Rock, AR 72119
501-975-8881Phone
501-975-8885 Fax

INVITATION TO BID

Bid Number: 20-3639

Date Issued: Wednesday, January 15, 2020

Date & Time Bid Opening: Wednesday, January 22, 2020 10:00 .AM

Time and Equipment North Little Rock Electric Department

Please direct technical questions to: Greg Woodward
Design Supervisor
North Little Rock Electric Department
GWoodward@nlr.ar.gov
501-992-4073

If you are obtaining this bid from our website, please be reminded that addendums may occur. It is therefore advisable that you review our listings (www.nlr.ar.gov) for attachments including any changes to the bid.

The City of North Little Rock encourages participation of small, minority, and woman own business enterprises in the procurement of goods, services, professional services, and construction, either as a general contractor or sub-contractor. It is further requested that whenever possible, majority contractors who require sub-contractors, seek qualified small, minority, and woman businesses to partner with them.

EXECUTION OF BID

Upon signing this page, the organization certifies that they have read and agree to the requirements set forth in this bid including conditions set forth and pertinent information requests.

Name of Firm: _____ Phone No.: _____

Business Address: _____

Signature of Authorized Person: _____

Title: _____ Date: _____, 2020

UNSIGNED BID COVER SHEET WILL BE REJECTED.

GENERAL TERMS AND CONDITIONS FOR THE CITY OF NORTH LITTLE ROCK, AR

1. The City reserves the right to reject any and all bids.
2. Quality, time and probability of performance may be factors in making an award.
3. Bidder must submit a completed signed copy of the front page of the "Invitation to Bid" and must submit any other information required in the "Invitation to Bid."
4. In the event a contract is entered into pursuant to the "Invitation to Bid," the bidder shall not discriminate against any qualified employee or qualified applicant for employment because of race, sex, color, creed, national origin or ancestry. The bidder must include in any and all subcontracts a provision similar to the above.
5. Bids will not be considered if they are:
 1. Submitted after the bid's opening time.
 2. Submitted electronically or faxed (unless authorized by Purchasing Agent).
6. **CONSTRUCTION**
 - A. Contractor is to supply the City with evidence of having and maintaining proper and complete insurance, specifically Workman's Compensation Insurance in accordance with the laws of the State of Arkansas, Public Liability and Property Damage. All premiums and cost shall be paid by the Contractor. In no way will the City be responsible in case of accident.
 - B. A Performance Bond equaling the total amount of any bid exceeding \$35,000.00 must be provided for any contract for the repair, alteration or erection of any public building, public structure or public improvement (pursuant to Arkansas Code Annotated Section 22-9-203). This provision may be waived if law allows.
 - C. **NOTE: City uses Burndy Compression fittings and shoot ons.**
7. **AMBIGUITY IN BID** - Any ambiguity in any bid as the result of omission, error, lack of clarity or non-compliance by the bidder with specifications, instructions, and all conditions of bidding shall be construed in the light most favorable to the City.
8. The bid number should be stated on the face of the sealed bid envelope. If it is not, the envelope will have to be opened to identify.
9. Additional information may be obtained from:
COMMERCE DEPARTMENT, 120 Main Street, P.O. Box 5757, North Little Rock, Arkansas 72119 (501)975-8881
www.nlr.ar.gov

Bidding documents must be submitted on or before the bid's opening date and time. Unless noted, bids must be sealed and mailed or delivered to:

**Commerce Department
120 Main Street (P.O. Box 5757)
North Little Rock, AR 72114 (72119)**

**INVITATION FOR BID
Time and Equipment
City of North Little Rock Electric Department**

1.0 PURPOSE

The intent of this Invitation For Bid is to secure, work on a competitive basis,

2.0 COMPETITION INTENDED

It is the City of North Little Rock's (hereinafter referred to as the "City") intent that this Invitation for Bid (IFB) permit competition.

3.0 INSTRUCTIONS TO BIDDERS

3.1 Submission of Bids

Before submitting a bid, read the ENTIRE solicitation. Failure to read any part of this solicitation will not relieve a bidder of the obligations. The Bidder is responsible for being familiar with all conditions, instructions, and documents governing this project and bid. Failure to make such investigation and preparations shall not excuse the Vendor from performance of the duties and obligations imposed under the terms of this bid. Include other information, as requested or required. On the front of the envelope when submitting a bid, include Bid number and project title: **Time and Equipment – Bid Number 20-3639**. Bids must be received by the Commerce Department BEFORE the hour specified on the opening date. Bids may be either mailed or hand delivered to:

Commerce Department
City of North Little Rock
120 Main Street
North Little Rock, AR 72114

The City is not responsible for delays from the US Post Office or any other courier. *Faxed and emailed bids will not be accepted.*

3.2 Questions and Inquiries

Questions and inquiries, both verbal and written, will be accepted from any and all bidders. The City is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other City staff regarding the IFB may result in the disqualification of the bidder. Inquiries pertaining to the Invitation for Bid must give the IFB number, title and acceptance date. Material questions will be answered in writing with an Addendum provided, however, no questions will be taken after 10:00 a.m. on Tuesday, January 21, 2020. It is the responsibility of all bidders to ensure that they have received all Addendums. Addendums can be downloaded from www.nlr.ar.gov. (Click on Government, Commerce and Current Bids and Summaries.)

Contact the following person for questions regarding the bid specifications:

Greg Woodward
Engineering Supervisor
501-992-4073
GWoodward@nlr.ar.gov

3.3 Firm Pricing for City Acceptance

Bid price must be firm for the City's acceptance for a minimum of sixty (60) days from bid opening date.

3.4 Authority to Bind Firm in Contract

Bids MUST give full firm name and address of bidder. Failure to manually sign bid may disqualify it. Person signing bid should show TITLE or AUTHORITY TO BIND THE FIRM IN AN AGREEMENT. Firm name and authorized signature must appear on cover page of bid.

3.5 Late Bids

LATE bids will not be OPENED.

3.6 Basis for Award

The award(s) will be made to the lowest responsive, qualified and responsible bidder(s) based upon the prices and meeting the specifications in each Category.

- a) The City reserves the right to cancel invitations for bids or requests for proposals without penalty when it is in the best interest of the City. Notice of cancellation shall be addressed on the City's website under current Bids.
- b) The City reserves the right to reject any and all bids, to waive any minor informality or irregularity in any bid, to negotiate changes and/or modifications with the lowest responsible bidder and to award the bid to bidder deemed to be the most advantageous to the City. Bidders shall be required to comply with all applicable federal, state and local laws, including those relating to employment of labor without discrimination on the basis of age, race, color, handicap, sex, national origin or religious creed.
- c) Any bid not conforming to the specifications or requirements set forth in the bid request may be rejected.
- d) Bids may also be rejected if they are made by a bidder that is deemed un-responsible due to a lack of qualifications, capacity, skill, character, experience, reliability, financial stability or quality of services, supplies, materials, equipment or labor.

3.7 Negotiation with the Lowest Responsible Bidder

Unless all bids are cancelled or rejected, the City reserves the right to negotiate with the lowest responsive, qualified, responsible bidder in each category to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the low price and the specifications/scope of work to be performed.

- 3.8 Commencement of Work
City desires to start work as soon as possible after award. City will negotiate a firm commencement date with selected bidder. Submit your realistic, possible commencement date with your bid.
- 3.9 Should any changes to any document result from the bidding process, a revised Contract will be sent for signature to the selected bidder with any changes noted. City will sign and return a fully executed copy.
- 3.10 Debarment
By submitting a bid, the bidder is certifying that bidder is not currently debarred by the City, or in a procurement involving federal funds, by the Federal Government.
- 3.11 City Business/Privilege License
Contractor must hold a current Business/Privilege License with the City of North Little Rock or with any City within the State of Arkansas and a copy of the business/privilege license must be provided with the bid.
- 3.12 Voluntary On-Site Visit
All bidders may contact Greg Woodward to arrange a site visit if needed.
- 3.13 Acknowledgement of Contract
Respondents acknowledge and understand that upon award of the winning bid, the selected bidder will be required to review and sign a contract with the City of North Little Rock prior to providing any services to the City.

**NORTH LITTLE ROCK ELECTRIC SYSTEM-WIDE
MAINTENANCE, MODIFICATION AND CONSTRUCTION
GENERAL SERVICES AGREEMENT
AGREEMENT No. _____**

INDEX

<u>Articles</u>	<u>Page</u>
1. Definitions	4
2. Scope of Agreement	6
3. Term and Agreement Termination	6
4. Contract Orders	6
5. Contract Order Suspension	7
6. Contract Order Termination.....	8
7. Contract and Project Managers	8
8. Changes to Contract Orders	9
9. Amendments	9
10. Compensation	10
11. Laws, Project Rules and Licenses.....	11
12. Independent Contractor	13
13. Use of Information, Copyrights, Patents and Patent Indemnity.....	14
14. Contractor-Provided Insurance	16
15. Insurance Supporting Indemnity.....	17
16. Claims Reporting.....	17
18. Release and Indemnity	18
19. Title	19
20. Notices	19
21. Warranty	20
22. Inspection.....	21
23. Audit	21
24. Preference to City Service Area Suppliers	22
25. Environmental Requirements.....	22
26. Asbestos Handling or Removal.....	23
27. Subcontracting.....	24
28. Assignment	24
29. Non-Standard Parts.....	24
30. Handling City-Furnished Material and Equipment	25
31. Time and Order of Completion, Expediting.....	25
32. Delays	26
33. Force Majeure.....	26
34. Termination Due to Contractor's Fault.....	27
36. Deductions	28
37. Protection Against Claims and Bonding.....	28
38. Site Conditions	29
39. Use of Site.....	30
40. Testing	30
41. Contractor's Work Area.....	31
42. Contractor's Equipment	31
43. Illumination	31
44. Lines and grades	31
45. Use of Completed Portions of Work.....	31
46. Cleaning Up.....	32
47. Reports.....	32
48. Conflict of Interest.....	32
49. Contractors' Taxes, Sales and Use Taxes.....	32
50. Consequential Damages	33

51.	Governing Law and Jurisdiction.....	33
52.	Nonwaiver	33
53.	Severability.....	33
58.	Headings	34
59.	Attorneys' Fees.....	34
61.	Survival.....	34
62.	Filing.....	35

This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing. 35

Exhibits

Exhibit A – Time and Equipment Contract Order Form
Appendix 1 – Hourly Rate Chart

Exhibit B – Time and Equipment Compensation and Tax Terms
Appendix 1- Hourly Rate Chart

Agreement Number: _____
Effective Date: _____

THIS AGREEMENT is made between the City of North Little Rock (“City”) and _____ (“Contractor”), a [domestic] or [foreign] corporation authorized to do business in the State of Arkansas with principal offices located at _____, and is effective on the date signed by the City.

In consideration of the undertakings and subject to the conditions set forth herein, the parties agree as follows:

1. Definitions

The words and terms specified in this Article, or pronouns used in their stead, shall, for the purpose of this Agreement, have the meanings set forth below unless the context clearly indicates another meaning:

1.1 “Agreement” means, collectively, all of the covenants, terms, and stipulations contained in the various portions of this Agreement, its Exhibits, and all Amendments (if any) executed pursuant hereto.

1.2 “Amendment” means a document, other than a Contract Order or Change Order, executed by or on behalf of all parties to this Agreement that supplements or modifies this Agreement.

1.3 “Applicable Environmental Laws” means any and all laws, statutes, regulations, orders, rules, ordinances, or bylaws, and judicial interpretations thereof, whether existing as of the date of this Agreement, previously enforced, or subsequently enacted, of the United States or the State of Arkansas, in which Work under this Agreement is carried out or performed or in which transportation, storage or disposal of Hazardous Substances, as defined herein, occurs or of any other governmental or quasi-governmental authority having jurisdiction, that relate to the prevention, abatement or elimination of pollution, Hazardous Substances or protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as any or all may be amended, changed or supplemented.

1.4 “Change Order” means a written change to an existing Contract Order, provided that the form identifies the appropriate Contract Order and is executed as provided in this Agreement.

1.5 “City” means City of North Little Rock, Arkansas. Company is the party entering into this Agreement.

1.6 “Competence” or “Competent” means the expertise, experience, capability and specialized knowledge to perform Work in a good and workmanlike manner and within all accepted standards for the industry.

1.7 “Contract Manager(s)” means the person(s) designated in a Contract Order issued pursuant to this Agreement to act as the liaison to the Contractor to the extent described in Section 8 herein.

1.8 “Contract Order” means the documents issued by City, including, without limitation, any drawings or Specifications incorporated by reference therein, incorporating the terms of this Agreement, and used to initiate the performance of Work in accordance with the procedures outlined in Section 5 herein. Such form must be executed and accepted as provided in this Agreement to be valid.

1.9 “Hazardous Substance” means any substance, pollutant, toxic substance, hazardous waste, hazardous material, or petroleum product now or hereafter defined in, denoted by or designated pursuant to the law of any state, locality or municipality, or any governmental or quasi-governmental authority having jurisdiction, or any state in which Work under this Agreement is to be carried out or performed, or in which transportation, storage or disposal of any substance or material related to, or arising from, such Work occurs, Sections 307(a) and 311(b)(2)(A) of the Federal Clean Water Act, 33 U.S.C. § 1317(a), 1321(b)(2)(A); Section 112 of the Clean Air Act, 42 U.S.C. § 3412; Section 3001 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921; Section 7 of the Federal Toxic Substances Control Act, 15 U.S.C. § 2606; Section 101(14) and Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601(14) and 9602, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9604 and 9607; or any other Applicable Environmental Laws, as defined herein, and as any or all of the foregoing may be amended, changed or supplemented.

1.10 “Law” means the all applicable laws including, without limitation the following: constitutional law, civil law, common law, international law, equity, treaties, statutes, decrees, edicts, codes, orders, judgments, rules, ordinances and regulations of any local, municipal, territorial, provincial, federated, state, national or other duly constituted governmental authority or agency.

1.11 “Project Manager” as used in this Agreement shall have the meaning given to it in Section 8 herein.

1.12 “Reimbursable Costs” means actual costs incurred in the performance of Work directly attributable to the project and approved by the Contract Manager prior to expenditure.

1.13 “Site(s)” means the locations where the Work is to be performed, as designated in the applicable Contract Order.

1.14 “Specifications” means the description of required maintenance, repair, modification, construction or other services required by the City and any detailed requirements contained in a particular Contract Order and any changes thereto as may be implemented by Change Order.

1.15 “Subcontractor(s)” means any subcontractors, suppliers or materialmen providing services or material to Contractor for the purpose of completing Work under a Contract Order.

1.16 “Work” means each and every element of the maintenance, modification, repair, construction, technical services, or other activities required by a Contract Order or this Agreement, and includes all labor, testing, materials, equipment, transportation and other items necessary to complete such activities, except for items that are expressly stated to be the responsibility of the City in the applicable Contract Order or Change Order.

2. Scope of Agreement

The purpose of this Agreement is to set forth the terms and conditions under which the Contractor will provide maintenance, modification, repair, construction, technical services, or other Work as described in Contract Orders executed in accordance with the procedures set forth in Section 4 below. This is not a requirements contract and it is not an exclusive dealing contract. Each Contract Order is a non-exclusive agreement for providing Work. City retains the right to engage others to perform the same type of Work without any liability to Contractor, and make no representation as to the number, frequency or dollar value of Contract Orders for Work to be issued under this Agreement.

3. Term and Agreement Termination

3.1 The term of this Agreement shall be one year commencing on the effective date noted on the first page of this Agreement and shall automatically renew for successive one-year periods, unless sooner terminated pursuant to this Agreement.

3.2 City or Contractor may terminate this Agreement at any time and for any or no reason by giving a notice of termination thirty (30) days in advance to the other party. Neither party shall be liable to the other as a result of termination of this Agreement for any costs, claims, losses, damages or liabilities including, without limitation, loss of anticipated profits. City shall not be liable to Contractor for reimbursement for Work unperformed as a result of the termination. If this Agreement is terminated, Work under all Contract Orders shall be completed by Contractor in accordance with the terms of the respective Contract Order and this Agreement, which shall be deemed to remain in effect for purposes only of completing each Contract Order. City may, however, at its sole discretion, terminate any and all of its Contract Orders issued and outstanding as provided in Section 7 of this Agreement. The liability for termination of any Contract Order shall be in accordance with Section 6 of this Agreement.

4. Contract Orders

4.1 Each accepted Contract Order (Exhibit A) shall constitute a legal contract between City and Contractor separate and distinct from either any other Contract Order or this Agreement. Each Contract Order shall, nevertheless, be deemed to incorporate the provisions of this Agreement. Any provision of a Contract Order that modifies or deletes any provision of this Agreement shall be null and void, and the provisions of this Agreement shall be deemed to be unaffected and in full force and effect with respect to the Contract Order. Should any provision of the Contract Order be in conflict with any of the provisions of this Agreement, the provision(s) of this Agreement shall take precedence and govern. Notwithstanding the foregoing, a Contract Order may modify a provision in this Agreement if the amendatory provision in the Contract Order specifically references the applicable subsection in this Agreement intended to be amended and clearly states that the former modifies the latter. Any such modification shall be applicable only to the Contract Order in which such modification appears, and shall not serve to amend or modify this Agreement or any other Contract Order.

4.2 If a Contractor accepts a Contract Order, it shall do so promptly by executing and returning the Contract Order to the City. No Work shall commence prior to the execution and return of the Contract Order. If Contractor begins to perform the Work designated in a Contract Order that it has not executed or returned to the City, Contractor not be paid such Work without approval by the City Council. Each Contract Order accepted by Contractor shall be completed in accordance with the provisions of this Agreement as indicated below in Section 4.2, and no other provisions shall be deemed to be applicable.

4.3 The term of any Contract Order shall begin on the date the Contract Order is executed by City and shall continue through the termination date of this Agreement (subject to Subsection

4.2 hereof), the termination date, if any, provided in the Contract Order, completion of all Work under the Contract Order, or termination under Subsection 6.1 of this Agreement, whichever first occurs.

4.4 Except as otherwise expressly provided in this Agreement, any alteration, deletion or addition to Work in any Contract Order or a change in any provision of any Contract Order shall be effective only if made in a Change Order executed by City and Contractor.

4.5 "Pricing Information" means any price lists, rate schedules, work tickets, invoices, receipts or other documents related to Work, prepared by Contractor and submitted to City. Nothing in any Pricing Information, now or in the future, shall supersede, add to or amend in any way this Agreement or any Contract Order regardless of any provision to the contrary in any Pricing Information, except that:

(a) any Pricing Information included in this Agreement as part of Exhibit B, attached hereto and made a part hereof, shall be used for the sole purpose of establishing rates to be charged for Work, and

(b) any Pricing Information expressly made a part of a Contract Order shall be used for the sole purpose of establishing pricing for Work under such Contract Order.

Any other Pricing Information, now or in the future, shall be used for the sole purpose of accounting for rates charged for Work, provided the Pricing Information is consistent with the applicable pricing in Exhibit B or the Contract Order.

4.6 Upon City's request, Contractor shall promptly provide City with a list containing the name for each Contract Order that has not been fully performed by Contractor, the expected completion date of the Work under the Contract Order.

4.7 The Contractor, if requested in connection with a Contract Order that does not contain a fixed-price or lump-sum compensation term, shall provide City with reasonable cost estimates associated with the Contract Order, such as estimated costs by man-hours, cost of materials and other cost information as may be required by City before commencement of Work.

5. Contract Order Suspension

5.1 City may suspend at any time and for any reason Work under a Contract Order in whole or in part by notice to Contractor, and Contractor shall promptly comply and shall not place further orders or subcontracts for material, services or facilities with respect to suspended Work unless required to do so in the suspension notice from City. City may, at any time, authorize Contractor to resume any part of the suspended Work by notice to Contractor, and Contractor shall then promptly resume the specified Work. All suspension notices given under this Subsection 5.1 shall be in writing.

5.2 In the event Work is suspended, City shall pay Contractor (subject to the provisions of Subsection 10.4 regarding Work performed on a fixed-price or lump-sum basis), according to Exhibit B and subject to the other provisions of this Agreement that may reduce or suspend payment, for Work satisfactorily performed and obligations incurred prior to the effective date of suspension. During the suspension of Work, City shall not pay any compensation to Contractor with respect to the Work suspended except as determined by City at City's sole discretion. City's sole liability to Contractor for suspension shall be determined in accordance with this Section 5, and City shall not be liable for any other costs, claims, damages or liabilities whatsoever of Contractor or its Subcontractors, including without limitation, loss of anticipated profit or reimbursement for Work suspended. Contractor's contracts with Subcontractors shall contain a similar provision to this Section 5 to protect City from liability to Subcontractors for suspended Work, a fully executed copy of which shall be provided to City after execution.

5.3 In addition, in the event of Work suspension, Contractor shall immediately attempt to obtain suspension, upon terms satisfactory to City, of all orders and rental agreements to the extent that they relate to the portion of the Work suspended. If requested to do so in the notice of Work suspension, the Contractor shall continue to protect and maintain the Work, including those portions thereof that have been suspended.

5.4 Notwithstanding anything herein to the contrary in Subsections 5.1, 5.2 or 5.3, Contractor shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from the suspension of any Work: an equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the Work that City specifically has requested be maintained and protected; a standby charge sufficient to reimburse Contractor for the cost of maintaining, to the extent required in the notice of suspension, its organization and equipment committed to the Work in a standby status; and if, solely as a result of the suspension of the Work, the cost to Contractor of subsequently performing the Work is increased or decreased, an equitable adjustment will be made in any fixed-price or compensation limits stated in the Contract Order by issuance of a Change Order.

5.5 No compensation or extension of time shall be granted to Contractor if suspension of Work resulted from Contractor's non-compliance with, or breach of, this Agreement or the terms or conditions of any Contract Order.

6. Contract Order Termination

6.1 Without effect on this Agreement for purposes of any other Contract Order, City may, at any time and for any or no reason, including without limitation, non-appropriation of funds or change of law, terminate a Contract Order, in whole or in part, by notice or Change Order to Contractor, and Contractor shall promptly comply.

6.2 In the event a Contract Order is terminated in accordance with Subsection 3.2 or 6.1 of this Agreement, City shall pay Contractor, subject to any other provisions of this Agreement that may reduce or suspend payment, (a) according to Exhibit B or any compensation provisions contained in a Contract Order for non-lump sum or non-fixed price Work performed and obligations incurred prior to the termination, (b) for lump-sum or fixed-price Work, the percentage of any lump-sum or fixed-price which represents the percentage of the Work satisfactorily completed by Contractor, (c) for direct costs that Contractor incurs in terminating Work under the Contract Order, provided those costs (1) were authorized in advance by City, and (2) are properly supported by timesheets, invoices and the like. Subject to the provisions of this Agreement, City's sole liability to Contractor for termination is contained in this Subsection 6.2 and City shall not be liable for any costs, claims, damages or liabilities whatsoever of Contractor or its Subcontractors, including, without limitation, consequential, special or indirect damages, loss of anticipated profits or reimbursement for Work unperformed.

7. Contract and Project Managers

7.1 Contract Manager, who shall be designated by the City in each Contract Order, or such other individuals who might be designated by the City, in writing, during the term of the Contract Order shall serve as the liaison to the Contractor with respect to Contractor's performance under that particular Contract Order. The Contract Manager shall not have the authority to waive any terms hereof or to execute Amendments, Contract Orders or Change Orders; except that a Contract Manager is authorized to make minor changes pursuant to Subsection 8.1.

7.2 Contractor shall designate in each Contract Order a “Project Manager” or other representative who shall have full authority to act for Contractor in connection with such Contract Order. Contractor shall not change this designated representative without the prior written approval of the City.

8. Changes to Contract Orders

8.1 The Contract Managers shall have the authority to order, orally or in writing, minor changes in the scope of Work contained in an existing Contract Order, provided the change does not affect the compensation, cost or schedule of performance. The Contractor shall carry out such directions promptly.

8.2 Each Change Order must reference the Contract Order being changed and must be signed by a duly-authorized representative of both parties. Except as otherwise provided herein, no schedule extensions and no compensation in excess of any fixed prices or expenditure limitations contained in a Contract Order will be allowed until applicable schedule and compensation provisions are adjusted by means of a Change Order, and if necessary, approval by the City Council.

8.3 Notwithstanding the provisions of Subsections 8.1 and 8.2, the applicable Contract Manager may order orally, in the case of an emergency or schedule-sensitive situation, changes in the schedule and/or scope of Work, and such changes must be implemented by the Contractor. For purposes of this Subsection, emergency means any situation that has or will result in an interruption of electrical service to the customers of City, a significant loss of assets of City or an imminent health or safety risk to customers or employees of City, any Contractor or Subcontractor or the public. In this event, a written notice of anticipated schedule or cost impacts resulting from the City’s order shall be provided by the Contractor within ten (10) working days from the date of the oral change. As soon as practical following receipt of Contractor’s written notice of impacts, the City will issue a Change Order for execution by both parties containing any changes to compensation, scope or schedule provisions made necessary by such oral order.

8.4 Contractor hereby waives all claims for schedule extensions or additional compensation beyond that expressly allowed in this Agreement or by a Contract Order. Claims other than for schedule extensions or additional compensation (and claims for such schedule extensions or compensation if expressly permitted as aforesaid) shall be made in accordance with the following procedures:

8.4.1 A written claim shall be submitted to the City within ten (10) working days of the event that the Contractor claims has added to or changed the original schedule or scope of Work and, except as provided in Subsection 8.3, shall be submitted prior to performing any such changed Work.

8.4.2 The claim shall indicate the increase or decrease, if any, in cost and schedule in comparison to what the cost and schedule would have been had such event not occurred.

8.4.3 Sufficient detail shall be provided with the claim to permit a thorough analysis, including, without limitation, the methodology of computing proposed compensation.

8.4.4 In the event the City determines the claim is authorized under the provisions of this Agreement, a Change Order incorporating agreed-upon scope, schedule and compensation revisions shall be executed by both parties.

9. Amendments

Except as expressly allowed above, no waiver, addition, deletion, or modification of any provision contained in this Agreement shall be binding unless in writing and signed by duly-authorized representatives of both parties. Once an Amendment to this Agreement is made, it shall be deemed

incorporated as of its effective date for all ongoing and future Work, unless expressly stated to the contrary in the Amendment.

10. Compensation

10.1 For the satisfactory performance of Work under this Agreement by the Contractor, the City shall pay the Contractor in accordance with the provisions of this Agreement, Exhibit B hereto or any special compensation provisions contained in applicable Contract Orders and Change Orders. In the event of a conflict between this Agreement and any other document, the terms of this Agreement shall govern except where a Contract Order specifically references the conflicting provision of this Agreement and states that it overrides such conflicting provision.

10.2 Overtime may be required in order to complete a specific portion of the Work or to carry out the Work effectively. In the case of fixed-price or lump-sum Contract Orders such overtime shall be deemed to be included as part of the fixed-price or lump-sum stated therein. In the case of other Contract Orders, prior to scheduling any overtime, unless otherwise provided in the Contract Order, the written approval of the Contract Manager is required. Unless otherwise provided in a Contract Order, overtime is defined as time worked by any one employee of the Contractor or authorized Subcontractor employee in excess of forty (40) hours per week and shall only be reimbursed by City to the extent that the Contractor's or authorized Subcontractor's employee is paid such overtime. Anything in this Subsection to the contrary notwithstanding, even if the approval of the Contract Manager is obtained, no obligation of reimbursement for such overtime shall serve to increase any fixed-price or lump-sum contained in any Contract Order.

10.3 City shall not pay the Contractor or its employees for non-performance time, i.e., vacation time, sick time, holidays or other leave time authorized by the Contractor, nor for travel time to and from the Site designated for the performance of services hereunder or time during which Contractor's employees are unable to work due to Contractor's noncompliance with Site-specific rules and regulations referenced in Section 1.1, unless otherwise specified in a Contract Order. The Contractor's holidays shall be consistent with the holiday schedule at the Site for which Work is being performed, unless otherwise specified in a Contract Order. The City may direct the Contractor to work on a designated Site holiday. If the Contractor is so directed, that day becomes a performance day and is compensable at the premium rate established in Exhibit B, if applicable, or if addressed in the applicable Contract Order, the terms of such Contract Order shall govern.

10.4 Contractor shall prepare and submit to the City invoices for Work performed, Reimbursable Costs and other amounts due the Contractor to the extent specified in Exhibit B and any special compensation provisions contained in applicable Contract Orders, at least monthly on or as soon as practical after the first day of each calendar month. Each invoice shall be itemized to reflect the number of hours worked (and other items as are appropriate under the provisions of this Agreement) and shall be supported by time sheets, receipts and other documentation as the City may require. Where a Contract Order sets forth a fixed-price or lump-sum price, a single invoice shall be issued upon completion and acceptance of the Work, unless otherwise stated in the applicable Contract Order. Invoices shall reference the applicable Contract Order number, and shall be submitted to the address set forth in the Contract Order. Costs shall be distributed against City-provided cost codes if requested by the City.

10.5 Payments shall be made to the Contractor within forty-five (45) days after City's receipt of properly itemized and documented invoices, subject to the City's right to withhold those portions of the charges set forth therein that the City may contest in good faith, and the provisions of Sections 35, 36, and 37 and other applicable provisions hereof. Payment of Contractor's final invoice under a particular Contract Order is conditioned upon final completion of the Work described in the Contract Order, City's acceptance thereof, and receipt by City of satisfactory evidence of no undischarged liens arising because of the Work. Acceptance by Contractor of final payment pursuant to a Contract Order shall constitute a waiver

and release of all claims by Contractor against City in connection with the Work performed pursuant to such Contract Order.

11. Laws, Project Rules and Licenses

11.1 Contractor shall, prior to commencement of Work at any Site, request in writing from the Contract Manager copies of any applicable Site health, safety, quality and security rules, procedures and programs. Contractor and its Subcontractors, if any, shall observe and comply with all such applicable Site health, safety and security rules, procedures and programs, as same may be amended from time to time, and shall abide by all Law and the terms of any permit required for, or relating to, the Work to be rendered pursuant to this Agreement. If applicable, Contractors and Subcontractors with access to the City's network shall also be required to abide by the then-current communications policies to which City subscribe, and which are available upon request. If applicable, City may require Contractor, Subcontractor, and some or all of their employees to execute a confidentiality agreement related to the enforcement of the City's Communications Systems Policy; provided however, that failure of the City to require the execution of such confidentiality agreement shall not relieve the Contractor and Subcontractor from liability for failure to adhere to such policy. Contractor shall indemnify, defend and hold harmless City with respect to any claims, expenses (including attorneys' fees), liability or damage arising out of Contractor's or Subcontractors' failure to comply with any such Law, rules, procedures or programs or the provisions of this Section 11.

11.2 Contractor shall be responsible for providing a healthful and safe work place and working environment for its employees and Subcontractors during performance of the Work. Contractor shall protect the health and safety of Contractor's, Subcontractor's and City's employees, the public, and other third parties from any danger associated with the Work. All tools, equipment, facilities and other items used by the Contractor and its practices employed to accomplish the Work are considered part of the working environment. No representation or warranty is made by City that applicable Site health, safety, quality or security rules, procedures and programs are complete or adequate to protect any person from danger. To the contrary, it is incumbent upon the Contractor to assess the risks of its operations and develop safety programs and procedures accordingly. Contractor's obligations under Subsection 11.1 hereof are minimum requirements and Contractor's observance and compliance with such rules, procedures and programs shall not serve to discharge or release Contractor from its responsibility to provide its employees and Subcontractors a healthful and safe work place and working environment or to adapt more stringent rules, procedures and programs as may be necessary to prevent personal injury, death or property damage arising out of or relating to the Work to be performed. In addition, Contractor is responsible for and shall ensure that all Work is performed in compliance with any changes to such Site health, safety, quality and security rules, procedures and programs as are made by City in accordance with Subsection 11.3 below. Contractor agrees to adopt, maintain and enforce a complete and comprehensive safety program in writing which contains and delineates whatever methods, procedures and precautions are necessary to comply with the provisions of this Section 11 and shall not rely entirely upon City rules, procedures or programs to accomplish the goals and requirements of such Section. Contractor shall supply City with such written safety program upon its request.

11.3 City may modify or replace, at any time, the Site health, safety, quality and security rules, procedures and programs applicable to Work under a specific Contract Order by notifying Contractor either orally or in writing without complying with any provision on giving notice in this Agreement.

11.4 Contractor shall furnish City with written notice of Contractor's individual who is responsible for supervising Contractor's safety program and related record-keeping. If required by the Contract Order, Contractor shall employ a full-time, on-site qualified safety representative.

11.5 Contractor shall not undertake performance of the Work until the Work can be done safely. Contractor shall at all times conduct all Work under this Agreement in a manner to avoid the

risk of bodily harm or property damage. Contractor shall promptly take all precautions that are necessary and adequate to guard against any conditions that involve a risk of bodily harm or property damage. Contractor will only employ Competent, skilled employees and Subcontractors who are knowledgeable of dangers involved in the Work. Contractor shall continuously inspect all Work, materials and equipment to discover and determine any such conditions and shall be solely responsible for identification and correction of any such conditions.

11.6 Contractor shall notify the City immediately of any accident or injury. Contractor shall provide the City a complete copy of all accident reports and access to any accident investigations or descriptions.

11.7 The Contractor shall not permit or suffer the introduction or use of intoxicating liquor, beverages, drugs or the possession of firearms, explosives, or weapons or any other contraband upon Work or Sites, or upon any location owned, leased or controlled by City.

11.8 It is incumbent upon Contractor, Subcontractors, and their personnel, to perform all tasks with safety as its highest priority. To this end, when non-English speaking personnel are employed or present on the Site, it is the Contractor's obligation and responsibility to ensure that all personnel understand all work area signage, emergency announcements via public address systems, City radios, cell and land-based phones, computer and personal communications, as well as safety training information, including but not limited to videotaped recordings provided by City to the Contractor and that all non-English speaking personnel are capable of notifying others of safety hazards encountered or created in the workplace or Site. Supervision by an individual capable of translating shall be used to ensure that all signs, announcements or notifications can be translated immediately, providing for effective and safe work-rule enforcement. Should there be multiple non-English speaking crews, a translator is required for each crew. In the event the translator leaves a worksite where the Work is being performed by non-English speaking personnel, the Work being performed shall stop and the non-English speaking personnel shall vacate the worksite areas until they have a translator. Manpower charges to City shall cease for the time period the non-English speaking personnel are without a translator.

11.9 Contractor acknowledges that compliance with the provisions of Subsections 11.1 through 11.8 is of the highest importance. Any breach of these Subsections shall constitute a substantial and material breach of this Agreement and the Contract Order incorporating this Agreement entitling City to exercise the rights and remedies specified in this Agreement and any other rights and remedies under applicable Law or equity.

11.10 Contractor shall comply with all applicable Law. Without limiting the foregoing, unless this Agreement is exempt from Executive Order 11246, under the rules and regulations of the Secretary of Labor (41 C.F.R. § 60), the Contractor agrees that during the performance of this Agreement, it will fully comply with the provisions of the equal opportunity clause as set forth in Section 202 of Executive Order 11246 and 41 C.F.R. § 60-1.4(a)(1-7), which provisions are hereby incorporated by reference and made a part of this Agreement. During the performance of this Agreement, Contractor also agrees that it will fully comply with the applicable equal opportunity provisions of the Rehabilitation Act of 1973, as amended, and applicable regulations, 41 C.F.R. § 60-741, et seq., and the Vietnam Era Veterans Readjustment Act of 1974, as amended, and applicable regulations, 41 C.F.R. § 60-2.50, et seq., which are hereby incorporated by reference and made a part of this Agreement. The Contractor certifies that it does not and will not maintain or provide for its employees any facilities that are segregated by race, color, religion or national origin, or permit its employees to perform any services at any location, under its control, where segregated facilities are maintained, and Contractor will obtain a similar certification for all non-exempt subcontractors, as required by 41 C.F.R. § 60-1.8. The Contractor further agrees that to the extent applicable, including but not limited to, the purposes of promoting small and small disadvantaged businesses, the Contractor will fully comply with the requirements of the Small Business Act, 15 U.S.C. Section 631, et seq., and the Office of Procurement Policy Act, 41 U.S.C. Section 423, et seq., as

implemented in the Federal Acquisition Regulations found at 48 C.F.R. Part 1, et seq., all of which are hereby incorporated by reference and made part of this Agreement. Contractor shall provide City with information, as requested by City, to support any reporting that City must make pursuant to legal requirements, including information that City needs or otherwise requests in order to comply with reporting requirements of 48 C.R.R. 53.219 concerning small, small disadvantaged, and women-owned small businesses, if applicable. Contractor shall ensure that any Subcontractors do the same. In addition, Contractor shall, if applicable, comply with the Fair Labor Standards Act of 1938 (particularly sections 6, 7 and 12 thereof), as amended; the Social Security Act, as amended; and federal and state unemployment tax laws.

11.11 If during the term of this Agreement there are any changed or new Laws not foreseeable at the time of signing a Contract Order that affect both the scope of Work as set forth in the Contract Order and the cost or time of performance of the Contract Order, Contractor shall immediately and prior to implementing the changed scope of Work notify the City in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract Order. Thereafter, the City will make an equitable adjustment in any applicable fixed-price or lump-sum compensation and schedule provisions by issuance of an appropriate Change Order; provided, however, no adjustment shall be made where Contractor fails to give the City written notice of the change and anticipated results thereof prior to implementing the change.

11.12 Unless otherwise provided in the applicable Contract Order, Contractor and all Subcontractors shall procure at their own expense all necessary municipal and other governmental permits, licenses and inspections in connection with Contractor's and Subcontractors' Work performed under this Agreement. When required by Law or City, Contractor warrants that it will hold and will maintain current throughout this Agreement, a Certificate of License issued by the Contractors Licensing Board of Arkansas if performing Work in Arkansas, any license required under Arkansas law if performing Work in Arkansas, or similar licenses from other states that are recognized and accepted by, if applicable, such Arkansas Boards. Contractor warrants that such license numbers were furnished to the City and were accurately printed on the exterior of Contractor's bid for the Work. Contractor will verify, and represents to City that all Subcontractors approved by the City are duly-licensed.

11.13 Whenever requested to do so by the Contract Manager, Contractor shall immediately remove from the Sites, any employee of Contractor, any Subcontractor or any employee of Subcontractor performing Work under any and all Contract Orders as the City may designate. Contractor shall not allow such employee whom City have requested be removed, back on the Site of any of City's, other Sites or facilities without the prior written consent of the City. CONTRACTOR HEREBY RELEASES, FOREVER DISCHARGES AND HOLDS HARMLESS CITY FROM ANY COSTS, CLAIMS, LOSSES, AND DAMAGES OF ANY KIND WHATSOEVER BASED UPON NEGLIGENCE (ACTIVE OR PASSIVE), DEFAMATION, WRONGFUL DISCHARGE OR OTHERWISE WHICH CONTRACTOR MAY PAY, SUFFER, OR INCUR AS THE RESULT OF ANY SUCH REMOVAL.

12. Independent Contractor

12.1 Except as provided in Subsection 12.4, the Contractor shall maintain the status of an independent contractor with the sole authority to control and direct the performance of the details of the Work being rendered by its and Subcontractors' employees, and with responsibility for determining the safety of its and Subcontractors' employees performing Work. Contractor will at all times act as an independent contractor, and nothing stated or implied in this Agreement or in any Contract Order shall be construed to make Contractor, nor shall Contractor represent Contractor to be, an employee or agent of City. While Contractor's services shall meet with the approval of City, the City is interested in the results to be achieved and, accordingly, the detail, manner and method of performing Work shall be the responsibility of, and under the supervision and control of, Contractor and Subcontractors. Contractor shall supply all personnel utilized by it in performing Work. Contractor and Subcontractors shall have complete control of,

and supervision over their personnel, tools and equipment. The City shall have the right, but not the duty, to review the qualifications of Contractor's personnel and to disapprove unqualified personnel before assignment to perform Work hereunder.

12.2 The Contractor shall be solely responsible for payment of the Contractor's employees' wages or salaries, employee benefits such as vacation, sick leave, pension, holidays, medical, disability benefits, dental and life insurance; workers' compensation, unemployment insurance and all other legal and labor requirements. Except for any reimbursable Contractor's tax or sales or use taxes allowed to be billed pursuant to Exhibit B, the Contractor shall also pay and be solely responsible for all contributions, taxes and premiums payable under federal, state and local laws, measured on the compensation paid to the Contractor and/or its employees pursuant to this Agreement.

12.3 Notwithstanding anything in this Agreement to the contrary, Contractor, and not Company, any Affiliate or City, shall be solely responsible for (a) payment of all wages or salary or other compensation to Contractor personnel; (b) as applicable, withholding and payment of federal, state or local individual income taxes, FICA and other taxes and applicable amounts with respect to any payments made to Contractor and Contractor personnel, except for any reimbursable sales or use taxes allowed to be billed pursuant to this Agreement; (c) providing all pension and welfare benefits and other employment-related benefits, as applicable, to Contractor personnel, including, but not limited to, vacation, sick-pay, insurance, pension, medical, disability benefits, dental and life insurance and any profit-sharing benefits; and (d) all other legal and labor requirements regarding Contractor personnel. Contractor shall indemnify and hold harmless City and its past, present and future Mayor, Council Members, employees, and agents with respect to any claims, loss, expenses (including attorneys' fees and court costs), liability and damage, and penalty that any one or all of them may incur relating to or arising from or out of or in connection with any allegations by Contractor's personnel or Contractor or any third party, including any governmental entity that (1) any Contractor personnel are or were employees of City; (2) that any one or all are entitled to benefits from City, including, without limitation, benefit or welfare plan participation, vacation, or sick leave; (3) asserts wrongful termination, libel, slander, interference with employment or business relationships, or any type of alleged employment action or alleged discrimination in employment activities.

12.4 Where specifically requested in applicable Contract Orders, the Contractor shall provide qualified and competent personnel meeting all qualifications stated in such Contract Order to perform Work for the duration stated in such Contract Order. Contractor shall indemnify, defend and hold harmless City, and the Mayor, Council Members, employees, and agents with respect to any claims, expenses (including attorneys' fees), liability and damages arising out of any allegations by such personnel for wrongful termination, libel, slander, interference with employment or business relationships, or for any type of alleged discrimination in employment activities.

13. Use of Information, Copyrights, Patents and Patent Indemnity

13.1 All Specifications, drawings or other data, software, materials or other business or technical information (collectively the "Information") obtained by the Contractor, directly or indirectly, from City or developed or obtained by the Contractor (or others under its direction or supervision) in connection with the performance of this Agreement or Contract Order, shall be deemed confidential and owned by the City. During the term of this Agreement and thereafter, the Contractor shall not use or otherwise disclose such Information for any purpose (nor permit its use or disclosure by others who are under the Contractor's supervision or direction) without the City having given its prior written consent, except (a) to the extent necessary in connection with the performance of the Work hereunder for the benefit of the party owning such Information, or (b) where such Information was publicly available, or (c) the Contractor otherwise demonstrates to the satisfaction of the applicable owner of such Information that such Information was either actually known to the Contractor prior to this Agreement, or was independently and properly obtained or developed by the Contractor apart from this Agreement or Contract Order and without breach of any confidential relationships. Notwithstanding anything to the contrary contained herein, neither

Contractor nor its Subcontractors or the employees of either of them shall be restricted from providing information to judicial or regulatory bodies to the extent required by law or court order.

13.2 The Contractor represents that except to the extent stated in applicable Contract Orders, Contractor has the full and unrestricted right to disclose any information, knowledge and data that it or its employees may present to City in the performance of Work pursuant to this Agreement; that the City shall have the full and unrestricted right to use, reproduce, distribute or publish such information, knowledge, data or any material prepared pursuant to or in connection with this Agreement as City may deem appropriate; and that such knowledge, data or material shall be the sole and exclusive property of City.

13.3 As a governmental entity subject to the Arkansas Freedom of Information Act (the "Act"), City shall not have any obligation of confidence with respect to any information disclosed to City by Contractor. If Contractor clearly identifies certain information as proprietary information, prior to producing any identified information City will notify Contractor's designated representative that a request has been made under the Act; however, Contractor acknowledges that City shall at all times comply with its obligations under the law unless restrained by a court of law. Contractor shall not place any restrictive notices on any information, no matter the form of its recording, that Contractor provides to City hereunder. Should Contractor place any notices on any drawing, record or other document, City is hereby authorized to nullify, obliterate, remove or disregard such notices.

13.4 All tracings, drawings, field notes, requisitions, purchase orders, Specifications, computer programs (data files and other software in whatever form), original works, writings and other documents or records (collectively "Documents") developed by Contractor, its employees or any Subcontractor employees, in connection with any Contract Order shall be the sole property of City. Contractor shall provide the original and copies of the Documents to City when Work is completed or earlier upon City's written request. Contractor may, with the prior written approval of City, retain one archival copy of Documents. Contractor shall keep any approved archival copy confidential and shall not use it, directly or indirectly, in providing services to any other person or entity nor for any other purpose unless Contractor is required by Law or legal process to disclose the copy or secures written permission for such use from City. If required by Law or legal process to disclose, Contractor shall promptly notify City of the purpose and requirements of the disclosure. Contractor hereby assigns the copyrights in all Documents to City.

13.5 The Contractor shall require each of its employees and Subcontractor employees to execute such documents and do such things as may be necessary to effectuate Subsections 13.4 and to ensure that such intellectual property shall become the sole property of City, all at Contractor's sole cost and expense.

13.6 If either Contractor or City is made the subject of any claim or lawsuit based on the alleged infringement of any third-party patent, copyright or trade secret by reason of any aspect of the materials, services or Work provided or performed hereunder, it shall promptly notify the other party thereof in writing. Contractor shall defend, hold harmless and indemnify City against all other claims or lawsuits based upon the actual or alleged infringement of any third-party right. The indemnity set forth in this Subsection 13.6 shall include, without limitation, all penalties, awards and judgments; all court or arbitration costs; attorneys' fees; and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits. The indemnifying party shall have the right to control the defense of any litigation, and to settle or compromise all claims or lawsuits subject to its indemnity. However, the indemnifying party may not settle or compromise such claim or lawsuit without the written consent of the indemnified party if any settlement or compromise requires the indemnified party to part with any right or make any payment not indemnified or subjects the indemnified party to any injunction. Subject to the foregoing, the indemnified party shall have the right, at its option and expense, but not the obligation, to retain advisory counsel to represent its interests in defending any such claim or lawsuit. If any action results in an injunction against City with respect to the Work, materials, services or facilities provided under any Contract Order, or in the event the

use of the Work, materials, services or facilities furnished by the Contractor hereunder, or any part thereof, is, in such suit, held to constitute infringement, Contractor agrees that it shall, at its option and sole expense, either (a) procure for City the right to continue using the infringing subject matter, or (b) replace the infringing materials, Work, services or facilities with non-infringing items of equivalent value and functionality or modify the same so that it becomes non-infringing and retains its full value and functionality.

14. Contractor-Provided Insurance

14.1 Contractor shall provide and maintain for the term of this Agreement unless otherwise specified, at its own expense, insurance coverages in forms and amounts that Contractor believes will adequately protect it but in no case less than:

14.1(a) Notwithstanding any applicable statutory exemptions that may exist, Workers' Compensation Insurance in accordance with all applicable state, federal, and maritime laws, including Employer's Liability Insurance in the amount of \$1,000,000 per accident. The policy shall be endorsed to include a waiver of subrogation in favor of City.

14.1(b) Commercial General Liability Insurance including Contractual Liability Coverage covering liability assumed under this Agreement, Products Liability Coverage, Completed Operations Coverage to remain in effect for three years following the expiration or termination of this Agreement, Broad Form Property Liability Coverage, Personal Injury Coverage, and Explosion, Collapse and Underground Hazards, with a combined single limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

14.1(c) Commercial Automobile Liability Insurance including all owned, hired, leased, assigned and non-owned vehicles, with a combined single limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

14.1(d) Excess or Umbrella Liability Coverage following the form of coverages required in Subsections 14.1(a) through 14.1(c) with limits of liability, when combined with such primary coverage limits, equal to \$5,000,000 per occurrence.

14.1(e) If services provided under this Agreement are of a professional nature (design, engineering, etc.), Errors and Omissions Liability Insurance as may be appropriate and available in the amount of \$1,000,000 per claim, covering claims or damages because of injury or damages arising out of any act, error or omission of the Contractor in the rendering of professional services. Such coverage shall remain in effect for three years from the expiration or termination of this Agreement.

14.1(f) Such other insurance as may be deemed necessary or desirable by City for the Work provided pursuant to this Agreement or any Contract Order.

14.2 Contractor's insurance policies required by Subsections 14.1(b), 14.1(c) and 14.1(d) above, shall include City as additional insureds with respect to Contractor's performance under and liability arising from this Agreement. Contractor hereby waives all rights of recourse, including any right to which another may be subrogated, against City for personal injury, including death, and property damage. All of Contractor's policies of insurance shall be primary insurance and noncontributing with any other insurance maintained by City. Policies are to provide City with thirty (30) days' prior written notice of cancellation or any material adverse change in conditions or limit of liability. Contractor shall provide City with Certificates of Insurance issued to City evidencing coverage currently in effect upon execution of this Agreement and annually thereafter pursuant to the requirements of this Section 14.

14.3 Unless agreed otherwise in writing by City, Contractor shall require any Subcontractor providing services or Work under this Agreement or any Contract Order to carry insurance coverages in forms and amounts consistent with the requirements of this Section 14. Contractor shall obtain Certificates of Insurance evidencing such coverage prior to commencement of services or Work by the Subcontractor and shall present such Certificates evidencing coverage for the duration of the subcontract to the City and annually thereafter pursuant to the requirements of this Section 14.

14.4 Contractor and Subcontractors shall not begin Work until all of the insurance required of Contractor and Subcontractors is in force and the necessary documents have been received by City. Compliance with this Subsection is hereby expressly made a condition precedent to the obligation of City to make payment for any Work performed.

14.5 The minimum insurance requirements set forth above shall not vary, limit or waive Contractor's or Subcontractors' legal or contractual responsibilities or liabilities to any party.

15. Insurance Supporting Indemnity

15.1 It is agreed that Contractor's insurance shall apply to Contractor's indemnity and defense obligations under this Agreement. If it is judicially or statutorily determined that the insurance required hereunder exceeds the monetary limits permitted under applicable Law, it is agreed that said insurance requirements shall automatically be amended to conform to the maximum monetary limits permitted under such Law.

15.2 In the event that the indemnities provided for in this Agreement are judicially or statutorily determined to be invalid, impermissible or to exceed permissible amounts, such indemnities shall automatically be deemed to be amended to conform to law; provided, however, that City shall continue to be covered by such insurance policy(ies) as additional insureds to the extent of Contractor's indemnification responsibilities set forth in this Agreement, with such insurance to be primary as to all other policies (including any deductibles or self-insurance retentions) of City that may provide coverage. The Contractor and its insurer(s) waive all rights of subrogation and contribution against City to the extent that liabilities are assumed by Contractor.

16. Claims Reporting

16.1 Contractor shall notify the City as soon as reasonably possible at the address specified on the Contract Order, by certified mail or overnight express delivery, of all claims (a) brought for which City may be liable, or (b) asserted as arising from or connected with the contractual relationship, or (c) which may materially impair the ability of the Contractor to perform any of its obligations to City; and all events that in the light of reasonable experience may give rise to a claim included in the above categories.

16.2 Copies of notices pursuant to this Section 16 shall be sent concurrently to:

NLR Electric Dept.
Attn: Scott Springer
1400 W. Maryland Ave.
North Little Rock, Arkansas 72120

Amy Beckman Fields
NLR City Attorney
116 Main Street
North Little Rock, Arkansas 72114

17. Risk Allocation

17.1 Contractor shall release and indemnify City and hold City harmless for loss or damage, howsoever caused, to Contractor's or Subcontractor's tools, equipment and other property, whether owned, leased, rented or borrowed, that are used or intended for use in the Work to be performed and for

any consequential, special, incidental or indirect damages or loss of anticipated profits sustained by Contractor or Subcontractors.

17.2 Contractor shall compensate City for loss of or damage to existing property on the Site where Work is, or is to be, performed, and for any resulting indirect damages, or loss of anticipated profits sustained by City, if said loss or damage resulted from, arose from or related to the Work performed by Contractor or Subcontractors.

17.3 Contractor shall compensate City for loss or damage, howsoever caused, to City's property intended to be incorporated into or used in the Work to be performed and delivered to or located at the Site where Work is, or is to be performed.

17.4 Contractor shall release and indemnify City and hold City harmless for loss or damage, howsoever caused, to all Work in progress and all of Contractor's property intended to be incorporated into the Work and delivered to or located at the Site where Work is, or is to be, performed,

17.5 THE PROVISIONS OF THIS SECTION 17 SHALL APPLY EVEN IF THE LOSS OR DAMAGE RESULTS FROM CITY'S ACTIVE OR PASSIVE NEGLIGENCE.

17.6 Notwithstanding any other provisions of this Agreement to the contrary, Contractor shall also be responsible and not entitled to compensation from City for (a) any loss of money or securities in the care, custody or control of Contractor that are used or intended for use in performing Work, (b) unexplained or mysterious disappearance of any property in Contractor's care, custody or control, or shortage of any property disclosed on taking inventory, or (c) theft of property on the part of Contractor, Subcontractors or their agents or employees.

17.7 The foregoing indemnification by the Contractor is not a waiver of the City's tort immunity.

18. Release and Indemnity

18.1 Contractor shall, to the fullest extent allowed by applicable law, indemnify, protect and hold harmless, City and their contractors and each of their officers, directors, control persons, employees, agents and representatives (the "Indemnitees") from and against any and all losses, damages, including consequential, incidental and punitive damages, claims, liabilities, costs and expenses (including, without limitation, demands, fines, remediation costs, penalties, attorneys' fees, court costs, legal, accounting, consulting, engineering and other expenses) that may be imposed on, incurred by, or asserted against the Indemnitees or any of them by any party or parties (including, without limitation, a governmental entity), caused by, arising from, relating to or in connection with, in whole or in part, directly or indirectly: (a) Contractor's or Subcontractor's breach of any provision of this Agreement or any Contract Order, including, but not limited to, the representation and warranties set forth in this Agreement, (b) Contractor's or Subcontractor's negligence, wrongful act or omission, breach of implied warranties, or strict liability by reason of property damage, personal injury or death, of whatsoever nature in connection with the performance of the Work by the Contractor or Subcontractor, (c) any violation of Law or Applicable Environmental Laws by Contractor or Subcontractor or (d) the treatment, storage, disposal, handling, transportation, release, spillage or leakage of any Hazardous Substance in any form. Indemnitees may require Contractor to defend all suits or claims concerning the foregoing.

18.2 Further, with respect to Contract Orders being performed by Contractor as an independent contractor with sole rights to direct the Work performed by its employees and Subcontractors, the Contractor shall be solely responsible for and shall indemnify, protect and hold harmless Indemnitees, and upon request of an Indemnitee, defend the Indemnitee, and each of them, from and against any and all losses, damages, including consequential, incidental and punitive damages, claims, liabilities, costs and expenses (including, without limitation, demands, fines, penalties, attorneys' fees, court costs, legal,

accounting, consulting, engineering and other expenses), on account of the death of, or injury to the Contractor or any Subcontractor, any employee or agent of either, or any third party, caused by, connected with, relating to or arising from, in any way, in whole or in part, directly or indirectly, the Work performed or to be performed, or from the presence of the Contractor, Subcontractor, or their suppliers, materialmen, employees, agents or representatives on or near any Site or any property owned, leased, controlled or occupied by City.

18.3 Contractor may from time to time visit, or cause its or its Subcontractors' employees, agents or representatives to visit a location owned, leased, controlled or occupied by City for purposes of exploring the possibility or advisability of entering into a Contract Order with City or for any other purpose. In such event, the Contractor shall be solely responsible for and shall indemnify, protect and hold harmless the City and each of their officers, directors, control persons, employees, agents and representatives, and each of them ("Indemnitees"), from and against any and all losses, damages, including consequential, incidental and punitive damages, claims, liabilities, costs and expenses (including, without limitation, demands, fines, penalties, attorneys' fees, court costs, legal, accounting, consulting, engineering and other expenses), on account of the death of, or injury to the Contractor or any Subcontractor, any employee, representative or agent of either, caused by, connected with, relating to or arising from the presence of such Contractor, Subcontractor, or employee, representative or agent of either upon or at such location, Indemnitee may require Contractor to defend all suits or claims concerning the foregoing.

18.4 The foregoing indemnification by the Contractor is not a waiver of the City's tort immunity.

19. Title

Title to all Work, services, materials, supplies and structures procured by Contractor from third parties or supplied by Contractor and incorporated, or intended at the time of the procurement or supply to be incorporated, into the Work (excluding Contractor's tools, equipment and leased and rented items) shall pass to the City upon payment therefore by City, upon delivery to City's Site or when consumed in the performance of Work, whichever occurs first.

20. Notices

Except for Service of Process, and claim notifications pursuant to Section 16, any notice given by either party to the other pursuant to this Agreement, including but not limited to, termination notices or assignments or subcontracts, shall be in writing and be deemed validly given if delivered in person, delivered by private, prepaid courier, sent by facsimile or electronic mail with confirmation of delivery or deposited in the mail properly stamped with the required postage and addressed to the last-known office address of the respective addressee. Either party hereto shall have the right to change any address or addressee it may have given to the other party by giving such other party due notice in writing of such a change. Until so changed, notices shall be given to the addressees at the addresses set forth below, except that notices relating only to a specific Contract Order shall be sent to the address and addressee set forth in that Contract Order and as required by Section 16.

Contractor:

City:

NLR Electric Dept..
Attn: Scott Springer, Director
1400 W. Maryland Ave.

Attn. : _____

21. Warranty

21.1 The Contractor represents and warrants that it has the Competence to perform the Work, has or shall obtain the necessary tools, equipment and personnel to perform the Work, shall assign qualified and competent personnel to the performance of the Work set forth in each Contract Order, such personnel shall use their best efforts to perform the Work described in the Contract Order in the most expeditious, professional and economical manner consistent with the interests of the City, shall maintain and use all tools and equipment in accordance with manufacturer's specifications and recommendations and good engineering and operational practices, has or shall obtain, at its expense, before performing any Work all the necessary certificates, permits, licenses and authorizations to perform Work and conduct business, shall perform all Work in accordance with applicable Law and Applicable Environmental Laws, shall perform all Work in good faith, promptly and with due diligence and Competence, and fully comprehends the requirements and contingencies for performing Work and it shall examine the Site for any additional or special requirements and contingencies prior to performing Work.

21.2 The Contractor represents and warrants that it will not perform any aspect of the Work that it knows or has reason to believe cannot be performed in conformity with the provisions of this Agreement and applicable Contract Order. If Contractor determines that it cannot perform Work in conformity with these provisions, Contractor shall immediately inform City and work with City to develop a mutually satisfactory resolution for the inability to perform. Contractor further represents and warrants that it shall ascertain whether any drawings and Specifications applicable to the Work are at variance with any applicable Law and good engineering and operational practices prior to beginning any Work. If Contractor discovers any variance, it shall promptly notify City in writing and ensure the necessary changes are made before proceeding with the part of the Work affected.

21.3 The Contractor warrants that it will perform the Work provided for in this Agreement in conformance with the highest standards of care and practice appropriate to the nature of the Work and exercise the highest degree of thoroughness, competence and care that is customary in the utility industry. The Contractor further warrants that the Work performed hereunder will be of the kind and quality described in the Contract Order and will be free of defects in design (except where the City has furnished the design), title, workmanship, and materials. Contractor warrants that any equipment or goods supplied hereunder shall be new unless otherwise specified in the applicable Contract Order and that any Work supplied, repaired or modified by Contractor shall meet all performance or acceptance criteria in the applicable Specifications.

21.4 Without limiting the rights that City may have otherwise at Law or equity and in addition to the other warranties granted, Contractor guarantees and warrants that all Work performed and any materials and equipment provided in connection with the Work shall be free from defects or deficiencies for one year from the date of completion or acceptance of all Work, whichever occurs last. If City discovers any defect or deficiency during this warranty period, and City has notified Contractor of the defect or deficiency within a ninety (90) days after the end of the warranty period, Contractor, at its sole cost and expense, shall at City's option promptly repair or replace the defect or deficiency (including all other labor, materials and other Work necessarily incidental to effecting such correction of the defect or deficiency). Any Work provided under this Subsection 21.4 to correct any defect or deficiency shall be warranted on the same basis as provided in this Subsection 21.4 for the longer of (a) the balance of the one-

year warranty period or (b) six months from the date of completion or acceptance, whichever occurs last, of the repair or replacement.

21.5 Contractor shall use its best efforts to ensure that all warranties provided by Subcontractors, distributors, manufacturers or any other person or entity are assigned to City. If any warranty cannot be assigned to City, Contractor shall use its best efforts to make that warranty available for City's benefit. Contractor shall deliver a copy of each written warranty that may be applicable to City. The warranties under this Subsection 21.5 shall be in addition to any others provided under this Agreement, the applicable Contract Order or otherwise under the Law.

21.6 Without limiting the foregoing warranties and in addition to other remedies available to the City, at law or in equity, upon notice of a nonconformity in Work provided by the Contractor, Contractor shall promptly remedy or re-perform (including removal and reinstallation of any repaired or replaced materials and equipment) such nonconformities at the Contractor's sole expense.

21.7 Contractor shall perform such tests as the City may reasonably require to verify that corrective rework complies with the original warranty. Should Contractor fail to remedy nonconformities promptly in accordance with this Section 21, City, in addition to other available remedies at law or in equity, may perform such remedial work at Contractor's sole expense.

22. Inspection

All Work must be thoroughly inspected by Contractor, and City shall have the right, at reasonable times and frequencies and during normal working hours, to inspect and review Work being performed pursuant to this Agreement by the Contractor or authorized subcontractors at the Contractor's, Subcontractors' or City's facilities without charge by Contractor. Neither the failure to make such inspections nor the approval of Work being performed shall relieve the Contractor of its responsibilities under this Agreement or any Contract Order.

23. Audit

23.1 The Contractor and all Subcontractors shall, throughout the term of this Agreement and each Contract Order and for at least four (4) years thereafter, keep and maintain complete and accurate time and other records or accounts of the Contractor, its affiliates and Subcontractors as are necessary to verify and support any and all charges billed to the City associated with this Agreement. This includes verification that any and all material, services, labor and other expenses incurred under this Agreement have been paid. This provision shall not entitle the City to audit fixed prices. All books and records shall be maintained in accordance with generally accepted accounting principles. Such books and records shall be made available at the Contractor's facility in the United States for verification, copying, audit and inspection by City or its representatives, including City-authorized third-party auditors. Any such audit shall be at City's expense and conducted during the Contractor's normal working hours; provided, however, that the Contractor shall provide reasonable assistance necessary to enable the City to conduct such audit, and shall not be entitled to charge City for any such assistance. Amounts incorrectly or inappropriately invoiced to City, whether discovered prior to or subsequent to payment by City, shall be adjusted or reimbursed to City by the Contractor within five (5) days of notification by City to the Contractor of the error in the invoice. Contractor shall include the necessary provisions in its agreements with Subcontractors that shall assure access by City's employees and representatives to applicable records of Subcontractors.

23.2 Contractor represents and warrants that all financial settlements, billings, and reports rendered to City or its representatives shall reflect properly the facts about all activities and transactions handled for the account of City, which data may be relied upon as being complete and accurate in any further recordings or reporting made by City or its representatives for whatever purpose. Contractor

shall notify City promptly upon discovery of any instance where the Contractor fails to comply with the foregoing. If Contractor discovers or is advised of any errors or exceptions related to its invoicing for Work, Contractor and City shall together review the nature of the errors or exceptions, and Contractor will, if appropriate, promptly adjust the relevant invoice and refund overpayments.

24. Preference to City Service Area Suppliers

If required in the Contract Order or by the law of the jurisdiction in which Work is to be performed, the Contractor agrees to give preference and priority to sources of supply within the area served by City's facilities. Justifiable exceptions could be, among others, price differential or inability to meet Specifications or delivery schedule.

25. Environmental Requirements

25.1 Contractor and its Subcontractors shall, in performing Work, have the responsibility and liability for the proper management of Hazardous Substances and waste in accordance with all Law and Applicable Environmental Laws and in accordance with any permit required for, or relating to, the Work to be performed. In particular, Contractor and its Subcontractors shall:

25.1(a) implement procedures to minimize the generation of Hazardous Substances and waste. These procedures shall include, at a minimum, process substitution, materials recovery, and continued product use. When possible, Contractor shall select less-toxic alternatives to minimize Hazardous Substance generation;

25.1(b) consolidate (with like product) partially full containers of paint, solvent, chemicals, and other products whenever possible, to minimize Hazardous-Substance waste and allow use of the remaining product;

25.1(c) ensure that any empty containers to be discarded are deemed "empty" in accordance with 40 C.F.R. § 261.7 or applicable state regulations;

25.1(d) not commingle waste generated by Contractor or Subcontractor with any waste generated by City or others without prior written permission from City;

25.1(e) segregate Hazardous Substances from non-Hazardous Substances at all times;

25.1(f) either return to the supplier for credit, or transfer to Contractor's storage facility or next job site for use, any unused and still-usable materials belonging to Contractor; and

25.1(g) control waste and Hazardous Substance generation activities, to the extent possible, to fall within the conditionally exempt small-quantity or small-quantity-generator regulations under the Resource Conservation and Recovery Act, as amended, and its regulations and any applicable state regulations.

Contractor and its Subcontractors shall also ensure that all waste and Hazardous Substances are handled in compliance with any Exhibits relating to the management of such materials that are made a part of this Agreement or any Contract Order.

25.2 Contractor represents and warrants that it and its Subcontractors are and will remain in compliance with all Applicable Environmental Laws, have not been placed on notice of, or received any request for information, demand, or complaint concerning any violation of any Applicable Environmental Laws, are not now subject to any consent decree, compliance order, or enforcement order

pertaining to any Applicable Environmental Laws, and have never been cited, convicted, fined or the subject of any administrative or criminal proceeding in connection with the handling, removal, storage, transportation, treatment, or disposal of any Hazardous Substance.

25.3 Contractor represents and warrants that it and all of its Subcontractors have all licenses, permits, certifications and approvals from all appropriate federal, state and local authorities and governmental entities necessary to comply with all Law and Applicable Environmental Laws requirements for their activities and operations under this Agreement and any Contract Order.

25.4 Contractor represents and warrants that its employees and the employees of all Subcontractors are properly trained in those federal, state and local environmental regulations and Laws that are relevant or applicable to the Work to be performed and are qualified and Competent to undertake the Work set forth in any Contract Order accepted or initiated by Contractor.

25.5 Contractor represents and warrants that it will provide its employees and its Subcontractors' employees with any special information or training necessary for the successful completion of the Work under this Agreement and any Contract Order, and further warrants that, if Hazardous Substances will be generated, handled, removed, stored, transported, treated or disposed of as part of the Work, that it will use only employees and Subcontractors' employees who are fully trained in the proper handling of Hazardous Substances.

25.6 Contractor represents and warrants that it will disclose to its employees and to its Subcontractors' employees the identity and nature of any Hazardous Substance to be encountered or handled by such employees during the course of the Work.

25.7 Contractor represents and warrants that it and its Subcontractors will comply with the Occupational Safety and Health Administrator's Hazard Communication Standard, 29 C.F.R. § 1910.1200 regarding Material Safety Data Sheets ("MSDS"), and 29 C.F.R. § 1926 regarding safety and health regulations for construction.

25.8 At least two weeks prior to transporting any chemical onto a Site, Contractor shall provide the Contract Manager with a SDS for each such chemical. Contractor shall not bring any chemical onto a Site that has been prohibited by City.

25.9 Contractor acknowledges that it has been made aware of the possibility that Work under some Contract Orders may involve, without limitation, the handling, storage, disposal, transportation, removal, or treatment of items such as, but not limited to, oil-filled equipment, fluorescent and other light bulbs or lamps, ballasts, battery cases, batteries, and containers of used oil. Some or all of such materials or items may constitute or contain Hazardous Substances. Certain of the materials or items may contain polychlorinated biphenyls (PCBs). If Work under a Contract Order involves such items or materials, Contractor represents and warrants that it will communicate such information to its and Subcontractors' employees, that its and its Subcontractors' employees are trained, qualified and Competent to handle properly such Hazardous Substances, that Contractor's and Subcontractors' employees are properly licensed to handle such Hazardous Substances, and that Contractor and Subcontractors are knowledgeable and fully capable of properly handling, storing, disposing of, transporting, removing or treating such Hazardous Substances in compliance with Applicable Environmental Laws.

26. Asbestos Handling or Removal

26.1 If Contractor or a Subcontractor encounters asbestos or other Hazardous Substance that was not known to exist while performing Work, Contractor shall notify the Contract Manager

immediately. In no event shall such material be handled or removed by the Contractor or a Subcontractor except with the prior written approval of the City.

26.2 Within thirty (30) days of the completion of any Work that includes asbestos removal, the Contractor shall deliver to the City a report of any and all analyses of air samples taken by the Contractor to determine the concentrations of airborne asbestos fibers in or near the work area, including those samples taken to determine background concentrations. This report shall include the volume of air and length of time of each sample, the date and time of the sample, whether the sample was a personal or area sample, the duties of the asbestos worker if the sample was a personal sample, the location of the sample if it was an area sample, the name of the person who performed the air sampling, the name of the laboratory that performed the analysis of the sample, and the results of the analysis in fibers per cubic centimeter.

27. Subcontracting

Work shall be performed solely by Contractor or by those Subcontractors that City may from time to time allow by its prior written approval. No approval shall relieve Contractor of any of its obligations under this Agreement or any Contract Order. Contractor shall be responsible to City for Work performed by all of its Subcontractors to the same extent it is for activities performed by Contractor's employees. Contractor shall remain liable for all acts, errors, omissions and negligence of all Subcontractors. Contractor shall ensure that all of its agreements with its Subcontractors contain provisions which are in conformity with and no less stringent than the provisions of the Contract Order(s) (incorporating this Agreement) between City and Contractor. Notwithstanding the provisions of this Section 27, any person or other entity not approved as a Subcontractor and used by Contractor to perform Work under any Contract Order hereunder shall be deemed a Subcontractor only for the purposes of Contractor's obligations and covenants under the applicable Contract Order. Contractor further hereby agrees to provide maximum practicable opportunity to small and small disadvantaged businesses (as such businesses are defined by the Small Business Administration or by the Federal Acquisition Regulations), for participation in any subcontracts that are to be let by Contractor in the performance of its obligations under this Agreement. Lists of all Subcontractors including expenditures with those Subcontractors that qualify as such small or small disadvantaged business shall be supplied to City by Contractor on a timely basis.

28. Assignment

Contractor shall not assign this Agreement in whole or in part without the prior written consent of City which consent may be withheld for any reason and any such purported assignment shall be null and void and, at City's option, will constitute a material breach of this Agreement. Contractor shall not assign any Contract Order without the prior written consent of City, which may be withheld for any reason and any such purported assignment shall be null and void and, at City's option, will constitute a material breach of such Contract Order. No assignment of this Agreement or any Contract Order, even if consented to by City shall relieve Contractor of its responsibilities under this Agreement or that Contract Order. Any assignee of Contractor shall meet all the requirements of Section 14 as a condition precedent to the assignment.

29. Non-Standard Parts

No items furnished by Contractor shall contain non-standard parts unless, and to the extent, the respective Contract Order requires or expressly permits such non-standard part or parts. When the Contractor furnishes items incorporating non-standard parts, it shall also furnish or obtain the right for the City to have full access without additional charge to all drawings, prints, specifications, software and instructions and to use that information for the purpose of repairing, producing or obtaining parts allowing the continued use of existing equipment. Non-standard parts include those that are not industry-standard designs or qualifications, or are otherwise unique or proprietary or available from limited suppliers.

30. Handling City-Furnished Material and Equipment

30.1 The Contractor, upon delivery to it or acquisition by it of any equipment, goods or other property owned or supplied by the City or in which the City has an interest, assumes the risk of and shall be responsible for any loss thereof or damage thereto at full-replacement cost until returned to the City. Upon completion of the Work provided by the Contractor pursuant to this Agreement, the Contractor shall return any such property to the City in the condition in which it was received by Contractor except for reasonable wear and tear and except to the extent such property has been reasonably consumed or modified in performance of Work pursuant to this Agreement.

30.2 Unless provided otherwise in the Contract Order, all Work requiring loading, unloading, hauling, handling, storing, caring for, reloading, securing and rehauling of all City-furnished materials and equipment as required to transport all such items from the point of delivery (City or third-party storage points, freight cars, truck trailers or staging areas, whether at the City's facility or Contractor's facility) to the place of use, installation, repair or modification shall be performed by the Contractor at its expense. Contractor shall also pay on its own account any demurrage or damage charges imposed on the City by carriers that arise from Contractor's action or inaction. The Contractor shall report to the City, in writing, within twenty-four (24) hours after receipt, any shortage in or damage to City-furnished materials or equipment. The Contractor shall maintain accurate records of all City-furnished materials on hand, and of the disposition and use of such materials or equipment.

30.3 Circumstances may arise in which Contractor requests the City to make available to Contractor certain of City's equipment or facilities for the performance of Contractor's Work under a Contract Order that did not address the provision of such equipment or facilities. If the City agrees to such request, the equipment or facilities will be charged to Contractor at rental rates agreed to by City and set forth in a Change Order issued pursuant to Section 8.

30.4 Contractor shall be solely responsible for assuring itself of the safety of any tools or equipment supplied or loaned by any City before use of the tool or equipment and shall return such equipment to the City in the condition in which it was received by Contractor, except for reasonable wear and tear. Any tools or equipment that are furnished, supplied or loaned by City to Contractor are on an **AS-IS, WHERE-IS** basis, and are loaned without any warranty or representation that they are adequate or appropriate for the safe and efficient performance by Contractor or Subcontractors. No warranty or representation is made as to their condition or fitness for any purpose. Contractor hereby holds City harmless against any damages or claims that may arise from such use by Contractor or any of Contractor's Subcontractors. Contractor shall inspect such equipment before Contractor's or Subcontractors' use. Upon its return to the City, City may inspect such tools or equipment to establish their condition and substantiate whether or not any part of the tools or equipment used by Contractor or its Subcontractors have been over-stressed or damaged in any way as a result of such use. The cost of repairs or replacement to correct such over-stress or damage resulting from such use shall be at Contractor's expense.

31. Time and Order of Completion, Expediting

31.1 The Contractor agrees that Work shall be performed and carried on at such points and times as may be required to meet the schedule as outlined in the Contract Order. Contractor shall also prepare and submit to the City prior to commencement of Work under a Contract Order a detailed schedule consistent with the general schedule requirements of the Contract Order. Schedule requirements are understood to constitute material terms of this Agreement. For purposes of Contractor's compliance with the schedule, time is of the essence of this Agreement and Contract Orders issued hereunder.

31.2 The Contractor's Work shall be undertaken in full cooperation with the City and with the least-possible interference with the continuity and efficiency of other activities being conducted at the Site(s).

31.3 If at any time the Contractor's personnel, in the opinion of the Contract Manager, shall be inadequate for securing the necessary progress or required quality of Work, as herein stipulated and as stipulated in a Contract Order, the Contractor shall increase or supplement its personnel to such an extent as to give reasonable assurance of compliance with the schedule of completion and the required quality of Work. The failure of the Contract Manager to make such demands shall not relieve the Contractor of its obligation to secure the quality and rate of progress required by a Contract Order, and the Contractor, alone, shall be and remain liable and responsible for the efficiency and adequacy of its methods and personnel.

31.4 The equipment and material furnished under this Agreement shall be subject to expediting by the City. The City or its representatives shall be allowed reasonable access to Contractor's plants, and those of its suppliers, for expediting purposes. As required by the City, Contractor shall supply schedules and progress reports for the City's use in expediting and shall cooperate with the City and require its Subcontractors and suppliers to cooperate with the City in expediting.

31.5 Unless otherwise provided, all references in this Agreement and Contract Orders issued pursuant hereto to days shall mean calendar days, and the time within which acts are to be done shall be computed by excluding the first and including the last day. If the last day is Sunday or a legal holiday, the act shall be completed on the next business day.

32. Delays

32.1 The Contractor warrants its expertise in maintaining schedules for assigned Work and will recognize events likely to cause delay. In the event of an occurrence which is likely to cause a delay in the schedule for an assigned task under a Contract Order, whether or not due to an act or proposed act of the City or by Force Majeure, the Contractor shall give the City prompt written notice of such likelihood and shall submit any claims for schedule extension in accordance with Section 9 herein. Contractor shall continue to keep the City advised during the continuance of the delay and shall furnish current estimates of the expected length of the delay and its effect upon the Work.

32.2 In the event of a delay that is excused due to Force Majeure, the City will execute a Change Order granting an extension of time for completion equal to the time lost by reason of the delay, if, but only if, Contractor has complied with Section 9 hereof, but any such event shall not be a basis for any Contractor claim for compensation in excess of the fixed prices or compensation limits contained in a Contract Order and shall not operate to release the Contractor from any obligations, other than schedules, under this Agreement.

32.3 In the event of any City-caused delay, other than Suspension pursuant to Section 6 hereof, the City will issue a Change Order granting an extension of time for completion equal to the time lost by reason of the delay and a price increase reflecting actual, direct costs necessarily incurred by Contractor in excess of any fixed prices or compensation limits contained in the Contract Order solely as a result of the City-caused delay but if, and only if, Contractor has complied with Section 9 hereof.

33. Force Majeure

33.1 For the purposes of each Contract Order, "Force Majeure" means any event beyond the control and without fault or negligence of the party claiming inability to perform its obligations and which party is unable to prevent or provide against by the exercise of reasonable diligence, including, but not limited to, acts of God, acts of the public enemy, riot, civil commotion, expropriation or condemnation of facilities or Sites, changes in applicable Law, floods, droughts, fires, explosions, sabotage, terrorism, war, police or hostile action, criminal behavior, or other catastrophes, accidents causing damage to or destruction, in whole or in part, of the equipment or property necessary to perform the Work, or failure

or refusal by any regulatory or other agency to act upon or grant permits, or licenses. Inability to pay moneys or financial hardship shall not, however, constitute events of Force Majeure.

33.2 No delay or failure in performance by City or Contractor shall constitute default under the Contract Order if, and to the extent, the delay or failure is caused by Force Majeure. Unless the Force Majeure event substantially frustrates performance of the Work or the purpose for the Work under the Contract Order, Force Majeure shall not operate to excuse, but only to delay performance of Work. If Work is delayed by reason of Force Majeure, Contractor shall promptly notify City. Contractor shall at its own expense do all things reasonably possible to mitigate or remove the effect of the Force Majeure event, and shall resume performance under the Contract Order as soon as possible. In no event shall City be liable to Contractor and Contractor shall hold City harmless for Contractor's, Subcontractors', and their employees' damages, anticipated profits, or other sums or payments occasioned by the event.

34. Termination Due to Contractor's Fault

34.1 If any or all Work to be performed under a Contract Order is abandoned by Contractor, or if Contractor fails to meet its payroll or other current obligations, or allows any liens to attach to City's property under any applicable laws; or if the City, in its sole discretion, determines that the schedule of Work is not being maintained or that Contractor is violating any of the conditions or provisions of this Agreement or Contract Order, in whole or in part; or if the City, in its sole discretion, determines that Contractor is refusing or failing to perform properly any Work or that Contractor is performing Work in bad faith or not in accordance with the terms thereof; or if City, in its sole discretion, determines that Contractor is failing to provide the labor, supervision, tools, equipment or materials necessary for the prompt performance of Work or failing to use due diligence in the performance thereof, the City may, without notice to Contractor's sureties and without prejudice to or limiting other remedies as may be available to the City, terminate Contractor's right to proceed with all or any Portion of such Work by issuance of a written termination notice to Contractor.

34.2 Upon termination pursuant to paragraph 34.1, the City shall have the right to complete the Work, the term "complete" to include repairing, remediating, removing or correcting any non-conforming or unsatisfactory Work, or to employ another contractor or other subcontractors to so do, and the City shall have the right to take possession of and use any of the materials, tools, equipment, supplies and other property then in use by Contractor for such Work or present on the Site. City shall return tools and equipment owned or leased by Contractor to Contractor upon completion of the job in as-good condition as when taken over by City, ordinary wear and tear excepted. Should City take over completion of the Work or obtain another contractor or subcontractors to so do, City's sole obligation shall be to pay Contractor, upon completion of the Work and subject to other provisions of this Agreement that may reduce or suspend payment, (a) for lump-sum or price-fixed Contract Orders, the lesser of either (i) the percentage of any moneys due that represent the percentage of conforming Work satisfactorily completed by Contractor under the Contract Order prior to the effective date of City's termination notice to Contractor under Subsection 34.1, less any amounts previously paid or (ii) the lump-sum or fixed-price for the Contract Order less all costs and expenses incurred by City in completing the Work and less any amounts previously paid; and (b) for non-lump-sum, non-fixed-price Contract Orders, an amount determined by Exhibit B for satisfactory and conforming Work performed and obligations incurred prior to the effective date of City's termination notice to Contractor under Subsection 34.1, less any amounts previously paid and less any costs or expenses incurred by City to repair, remediate, remove or correct unsatisfactory or non-conforming Work. Notwithstanding anything to the contrary herein, in the case of lump-sum or fixed-price Contract Orders if the costs and expenses incurred by City in completing the Work when subtracted from (a)(ii) above as provided herein, or in the case of non-lump-sum, non-fixed-price Contract Orders if the costs and expenses incurred by City to repair, remediate, remove or correct unsatisfactory or non-conforming Work when subtracted from (b) above as provided herein, results in a negative sum, the Contractor and its sureties, if any, shall be liable for and shall, upon notice from the City, promptly pay to City the amount of such negative sum. The City shall not be required to obtain proposals for completing such Work, but may make

such expenditures as in the City's sole judgment will best accomplish such reasonable and timely completion.

34.3 Upon receipt of any such written termination notice, Contractor shall, at its expense, for that Work affected by any such termination:

34.3(a) Assist the City in making an inventory of all materials and equipment in storage at the Site, in route to the Site, in storage or manufacture away from the Site, and on order from suppliers;

34.3(b) Assign to the City subcontracts, supply contracts and equipment rental agreements all as designated by the City; and

34.3(c) Remove from the Site all construction materials and equipment listed in said inventory other than such construction materials and equipment that are designated in writing by the City to be utilized by the City in completing such Work.

34.4 City's sole liability to Contractor for termination pursuant to Subsection 33.1 or for assumption of Work is contained in this Section 34 and City shall not be liable for any costs, claims, damages or liabilities whatsoever of Contractor or its Subcontractors, including, without limitation, consequential, incidental, special or indirect damages, loss of anticipated profit or reimbursement for Work unperformed.

35. Termination Due to Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, with respect to any financial obligation of the Owner which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement attachment, schedule, or exhibit thereto, by the Owner. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

Contractor shall be paid for all Work satisfactorily completed up to the date of termination.

36. Deductions

City shall have the right to deduct any loss, damage, liability, debt or claim, liquidated or otherwise, which such City may have against Contractor from the payment or amount owing to Contractor under the applicable Contract Order, any other Contract Order between City and Contractor.

37. Protection Against Claims and Bonding

37.1 A Contract Order shall not be binding against the City until the City has received such payment and performance bonds as may be required by the terms of the Contract Order in forms satisfactory to the City covering such Contract Order. Where required by a Contract Order, performance bonds and payment bonds shall each be made out in one hundred percent (100%) of the total price payable

under the Contract Order of this Agreement and must be issued by a bonding company approved by the City. The bonds shall be signed by an authorized official of the bonding company and must be accompanied by the bonding agent's certified and current power of attorney. The Contractor shall deliver the required bonds to the City upon execution of the applicable Contract Order and prior to commencement of the Work under such Contract Order.

37.2 Contractor shall pay and completely satisfy all claims for labor, equipment, rentals and material employed or used by it in connection with any or all of the Work performed under each Contract Order when those claims become due and payable. Contractor shall ensure that no liens of any kind are fixed upon or against the performance or payment bond by Contractor's employees, Subcontractors or Subcontractor employees. To the fullest extent permitted by law, Contractor hereby indemnifies, holds harmless City and agrees to defend same against any claims or rights of lien or security interests upon the performance or payment bond as a result of the furnishing of labor, material or equipment under the terms of this Agreement or any Contract Order.

37.3 Contractor shall, if required by the City, at time of delivery of any aspect of the Work or at such time as any payment under this Agreement is due to be made, furnish the City with a verified certificate (or any similar document reasonably requested) showing names of Contractor's Subcontractors, materialmen and suppliers hereunder, the Work done or to be done by and the amount payable to each, and furnish waivers or other evidence acceptable to the City that said Subcontractors, materialmen and suppliers have been paid in full or in sufficient amount to justify the payment that is otherwise due.

38. Site Conditions

38.1 Contractor shall have the sole responsibility of satisfying itself by personal inspection or otherwise concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting safety, transportation, access, disposal, handling and storage of materials; availability and quality of labor, water and electric power; availability and condition of roads; climate conditions, tides and seasons; river hydrology and river stages, physical conditions at the Site and the project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Work; and all other matters that can in any way affect performance of the Work, or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the Work.

38.2 Information prepared by the City is not intentionally deceptive, but may contain inadvertent inaccuracies or omissions. Accordingly, unless stated otherwise in a Contract Order, information that may have been provided by the City prior to execution of a Contract Order shall in no way relieve Contractor of its responsibilities under each Contract Order. The Contractor further states that the price and the schedule applicable to such Contract Order will be based on Contractor's independent investigations and knowledge and are not based on any representation of the City.

38.3 Contractor shall promptly, and before such conditions are disturbed, notify the City in writing of latent and unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and differing from those indicated during Contractor's investigations pursuant to Subsection 37.1 above. The City will, as promptly as practicable, investigate such conditions. If it is determined by the City that such conditions do materially differ from conditions that should have been discovered in responsible investigations conducted by Contractor pursuant to this Section 37, and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of any Work under a Contract Order, whether or not said Work is changed as a result of such conditions, a Change Order

will be issued reflecting the necessary schedule extension or the increase over any fixed price or cost limitation that is contained in the Contract Order which increase shall be solely for actual, direct costs incurred by Contractor due to the unforeseeable Site condition. No claim of Contractor under this section will be allowed unless Contractor has given the required written notice and unless Contractor submits a written claim pursuant to Subsection 9.4 hereof.

39. Use of Site

39.1 All materials and equipment shall be brought into the Site by making use of such roadways and drives as designated by the City or across the grounds along routes established by the City.

39.2 At all times construction areas shall present a neat, orderly, and workmanlike appearance.

39.3 Any private property, streets, roadways, sidewalks, ground, plantings, trees or other property that may be damaged as a result of the Work shall be properly repaired or duly replaced in a timely manner by the Contractor to the full satisfaction of the City.

39.4 The Contractor shall protect public roads and bridges that may be damaged by, interfered with, or given undue wear by reason of the Work done under this Agreement, and shall repair or replace them if damaged at its own expense, to the satisfaction of the governmental authorities or the owners thereof.

39.5 In the event the Work involves construction under or about public roads or railroads, the Contractor shall make suitable arrangements with governmental authorities and railroads to the end that the public using the highways and the movement of trains shall be safeguarded from accident and delay.

39.6 Contractor shall receive, unload, store in a secure place, and deliver from storage to the construction site all materials and equipment required for the performance of this Agreement. If storage facilities and methods of storage are not described in the applicable Specifications, the location of storage must be approved by the Contract Manager.

39.7 The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors and the right to use said items in carrying out this Agreement or to dispose of same is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title or interest in said materials nor shall they assert or make any claim thereto.

39.8 The Contractor's applicable Project Manager shall give his or her personal attention constantly to the faithful and safe prosecution of the Work, and shall be present on the Site of the Work under each Contract Order continually during its progress.

40. Testing

40.1 Unless otherwise provided in the applicable Specifications, testing of materials or any aspect of the Work shall be performed by Contractor at its expense and in accordance with the Specifications. Should tests in addition to those required by the Specifications, if any, be desired, Contractor will be advised in ample time to permit such testing. Such additional tests will be at City's expense. If Contractor covers all or any portion of the Work prior to any test required by the Specifications, the cost of any necessary uncovering and replacing shall be borne by Contractor.

40.2 Contractor shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests required by the Specifications to be performed on materials or Work in place including reasonable stoppage of Work during testing.

41. Contractor's Work Area

All of Contractor's work areas on the Site will be assigned by the applicable Contract Manager. Contractor shall confine its, and its Subcontractor's operations, office, shops, storage, assembly and equipment and vehicle parking to the areas so-assigned.

42. Contractor's Equipment

If requested, Contractor shall, at the time any equipment owned by Contractor or a Subcontractor is moved on-site, present to the applicable Contract Manager an itemized list of all such equipment and tools, including but not limited to power tools, welding machines, pumps and compressors. Said list must include description and quantity and serial numbers where applicable. Prior to removal of any or all equipment, Contractor shall clear such removal through the Contract Manager. No equipment or tools can be removed from the job site without proper clearance by the City. Contractor shall not remove tools or equipment from the Site before the Work is finally accepted without Contract Manager's written approval. Such approval shall not be unreasonably withheld.

43. Illumination

When any Work is performed at night, or where daylight is shut off or obscured, Contractor shall, at its expense, provide artificial light sufficient to permit Work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods, the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a good-and-safe, workman-like manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

44. Lines and grades

44.1 Contractor shall complete the layout of all Work and shall be responsible for all requirements necessary for the execution of any Work to the locations, lines, and grades specified or shown on the applicable drawings, subject to such modifications as the City may require as Work progresses.

44.2 The City may establish and maintain base lines and bench marks adjacent to the various sections of Work. All such marks and stakes must be carefully preserved by the Contractor, and in case of their unnecessary destruction by its or any of its employees, they will be replaced by the City at the Contractor's expense.

45. Use of Completed Portions of Work

Whenever, as determined by the City, any portion of Work performed by Contractor is in a condition suitable for use, the City may take possession of or use such portion. Such use by the City shall in no case be construed as constituting final completion, and shall neither relieve Contractor of any of its responsibilities under this Agreement nor act as a waiver by the City of any of the conditions thereof, provided that Contractor shall not be liable for the cost of repairs, rework, or renewals that may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the

completion of remaining portions of Work, Contractor shall be entitled to an appropriate schedule extension or compensation adjustment provided Contractor complies with Subsection 8.4 above.

46. Cleaning Up

Contractor shall at all times keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Contractor shall promptly remove all of its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of Work. Upon completion of the Work and before final payment is made, Contractor shall, at its expense, and in a timely manner, satisfactorily dispose of rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the Work, including return to the City of any salvageable materials supplied by the City or paid for by the City for incorporation into the Work but not used; and Contractor shall leave the premises in a neat, clean and safe condition. In the event of Contractor's failure to comply with the foregoing, the same may be accomplished by the City at Contractor's expense.

47. Reports

With respect to the Work performed by Contractor or any Subcontractor, Contractor shall provide the City with such records and reports, including safety reports, concerning the Work as the City shall request. Upon request by the City or upon completion of Work under a Contract Order, Contractor shall return any drawings incorporated into such Contract Order, after having indicated thereon all changes to the originals to show the "as-built" condition of the Work.

City may, from time to time, issue one or more requests to Contractor to furnish to City any or all of the following information: financial statements (including, but not limited to, balance sheets and income statements certified as prepared in accordance with generally accepted accounting principles), bank and trade references, Dun and Bradstreet Number, the legal form, state of incorporation or organization and full legal name of all of Contractor's parent companies, and periodic updates to any or all of the foregoing information. Contractor, at its sole cost and expense, shall promptly comply with such requests.

48. Conflict of Interest

The Contractor represents that there is no conflict of interest between its performance of this Agreement and its employment by others. In the event the Contractor believes that there is presently any such conflict, or such conflict arises during the performance of the Work pursuant to this Agreement or any extension thereof, it shall advise the City immediately and take all necessary action as may be required by City to reduce or eliminate the conflict of interest.

49. Contractors' Taxes, Sales and Use Taxes

49.1 Taxes will be paid in accordance with Exhibit B hereto.

49.2 Contractor will indemnify, defend and hold City harmless from penalties or interest imposed as a result of Contractor's failure to pay required taxes, unless such failure was the result of City's instructions issued pursuant to this Section. Prior to payment of any sales, use, excise, contractor's tax or similar tax for which Contractor is entitled to reimbursement, Contractor will afford the City the opportunity to challenge the tax computation or the taxability of Work that the City believes in good faith to be taxed in error. Contractor further agrees to cooperate with the City with regard to the City's challenge of a disputed tax before the applicable taxing authority. The City agrees to reimburse Contractor for any penalties

incurred by Contractor by reason of following the City's instructions to challenge and withhold payment of a particular tax.

50. Consequential Damages

UNDER NO CIRCUMSTANCES SHALL CITY HAVE ANY LIABILITY TO ANY OTHER PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, CONTRACTOR AND SUBCONTRACTORS, THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES, FOR ANY CONSEQUENTIAL, INCIDENTAL, OR OTHER INDIRECT LOSS OR DAMAGES, PUNITIVE, OR EXEMPLARY DAMAGES OR COSTS HOWSOEVER CAUSED.

51. Governing Law and Jurisdiction

The validity, interpretation and construction of this Agreement and each Contract Order incorporating this Agreement shall be governed in accordance with the Laws of the State of Arkansas without reference to that state's principles of conflicts of law. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas. **EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

52. Nonwaiver

The failure of either party to insist upon or enforce, in any instance, strict performance by the other of any of the terms of this Agreement, or any Contract Order or to exercise any rights herein or therein conferred shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such terms or rights on any future occasion.

53. Severability

It is agreed that if any clause or provision of this Agreement is by the courts held to be illegal or void, the validity of the remaining portions and provisions shall not be affected, and the rights and obligations of the parties shall be enforced as if this Agreement did not contain such illegal or void clauses or provisions.

54. No Assignment

The Work to be performed pursuant to this Contract is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Owner.

55. Merger

This Contract, including exhibits, constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the services provided hereunder. All prior agreements,

negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

56. Modification

No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

57. No Presumption against Drafter

Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

58. Headings

The headings in this Agreement permitting City to obtain Work through the issuance of Contract Orders and in the agreement formed by any Contract Order are for ease of reference only and shall not be used to construe or interpret the provisions of this Agreement or Contract Order.

59. Attorneys' Fees

Should it become necessary for City to engage in legal proceedings for the purpose of enforcing either this Agreement permitting City to obtain the performance of Work through the issuance of Contract Orders or the agreement formed by any Contract Order or for the purpose of recovering damages sustained by City due to Contractor's breach of this Agreement or the agreement formed by any Contract Order, City shall be entitled to reimbursement by Contractor for costs, attorneys' fees and any other reasonable expenses incurred in connection with those legal proceedings.

60. Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument. An original signature transmitted by facsimile or other electronic means shall be deemed to be original.

61. Survival

The provisions of this Agreement that by their nature continue shall survive any expiration or termination of this Agreement or Contract Order, including all obligations or rights that exist as a result of an event or the failure of an event prior to or at the time of expiration or termination of this Agreement.

62. Filing

This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

WITNESS the due execution hereof by the parties hereto effective as of the day and year signed by the City of North Little Rock.

CITY OF NORTH LITTLE ROCK.

CONTRACTOR:

By: _____	By: _____
Name: <u>JOE A. SMITH</u>	Name: _____
Title: <u>MAYOR</u>	Title: _____
Date: _____	Date: _____

ATTEST:

DIANE WHITBEY, CITY CLERK

Reviewed and approved by:

Amy Beckman Fields, City Attorney

By: _____ Date _____
Deputy City Attorney

General Service Agreement Number: _____

Effective Date: _____

EXHIBIT A
TO
MULTIPURPOSE MAINTENANCE, MODIFICATION AND
GENERAL SERVICES AGREEMENT
Time and Equipment
CONTRACT ORDER FORM

Contract Order No. _____

Order Effective Date: _____

This Contract Order is issued by NLR Electric Department ("NLRED") pursuant to the Agreement No. _____ between City of North Little Rock ("City") and _____ ("Contractor").

1. Scope of Work

A. This Contract Oder shall be effective beginning _____ and shall terminate on _____.

B. Contractor shall provide all labor, supervision, tools and equipment necessary for the installation, removal, and maintenance of distribution overhead lines, distribution commercial/residential service, and restoration. Occasional distribution underground work may be required.

NOTE: City uses Burndy Compression Fittings and Shoot Ons. Contractor shall equip crews with the proper equipment

City may assign work that requires crewmembers to work independently,

Work shall be compensated on a Time and Equipment basis according to the applicable rate schedule.

Work performed on distribution facilities will regularly include voltages up to and including 15Kv.

- C. City's Contract Manager(s) means the person(s) designated in a Contract Order issued pursuant to this agreement to act as City's liaison to Contractor.

For purposes of this order, City's Contract Manager and City's Contract Manager's Designated Representative(s) are listed in the table entitled "Contract Manager(s) and Designated Representatives(s)" within this document.

All references herein to City's Contract Manager shall be directed to the appropriate person(s) listed in this table. City's Contract Manager's Designated Representative(s) shall have the same rights and responsibilities as City's Contract Manager. The Contract Manager or the Designated Representative shall have sole responsibility for performance of this contract order.

City's Contract Manager shall, at their discretion, appoint Project Manager's or Project Engineers to certain projects. Their duties shall be to provide City oversight of the project to insure timely completion and adherence to City's specifications.

Requests for any information and/or required authorizations shall be directed to the appropriate person(s) listed in this table. Changes to these designations may only be accomplished by a properly executed amendment to this order.

- D. Type of work assigned (i.e. overhead, underground, restoration) shall be made at the sole discretion of the City's Contract Manager.
- E. City reserves the right during the contract period to bid projects when deemed necessary. City may exercise this option at any time to review competitive pricing to assure that City is compensating work at the most effective cost. Projects let out for bids can include several work requests within the City's service territory.
- F. Contractor shall require the same standards of performance and safety from subcontractors as City including Safety and Health program, loss experience, reference checks, experience checks and performance evaluation

Contractor shall insure that subcontractors maintain a safety program that requires compliance with all OSHA regulations as well as compliance with all City requirements

Contractor shall insure that subcontractor provides supervision on work sites with sufficient expertise to insure safe and timely completion of work.

Subcontractors working on City's system shall be deemed to be employed by Contractor and as such, Contractor shall be responsible for all actions and adherence to all other requirements within this contract.

- G. All references to 'per day and 'work day' shall mean a twenty-four hour period consisting of 12:00 midnight to 12:00 midnight

H. All references to a workweek shall be defined as a fixed 168 hour period consisting of seven (7) consecutive twenty-four (24) hour periods.

I. Contractor shall provide City's Contract Manager with the defined workweek of seven (7) consecutive twenty-four (24)-hour periods and work schedule for each Contractor employee providing services to City. Alternate work schedules may be permitted upon approval of City's Contract Manager subject to the provisions of this document.

City shall retain the option to alter the scheduled hours in a workday in order to take advantage of daylight hours and cooler temperatures during warm weather.

City shall retain the option to alter scheduled work hours in fall and winter months.

J. Contractor shall be responsible for damages to City or customer property that results from any independent actions or negligence by Contractor's personnel.

2. Prohibited Activities

A. Contractor shall only perform work that has been approved and authorized by City's Contract Manager to be worked by contract labor. Contractor shall not perform work assigned to them by any person who is not an authorized representative of City's Contract Manager. Acceptance and performance of work not assigned to Contractor by an authorized representative shall be deemed as unassigned and unapproved work and shall not be billed to City.

Contractor may at any time contact City's Contract Manager for the representative(s) authorized to assign work.

B. Contractor shall not perform work outside of their usual day to day work without prior written consent of City's Contract Manager. Contractors not recognized as performing overhead construction, maintenance, or restoration as a part of their usual day to day activities (such as a contractor usually performing underground work) shall not participate in overhead construction, maintenance, or restoration activities without the prior written consent of the City's Contract Manager.

Contractors desiring to perform work that is outside of their usual day-to-day work or desiring to perform work for which they are not recognized as performing on a day-to-day basis shall initiate a request for written consent to City's Contract Manager. The request shall include:

- 1) Specifically the work to be performed
- 2) A roster of personnel proposed to perform the work
- 3) The qualifications and experience level of the proposed personnel
- 4) The equipment that will be used in performing the proposed work.

City's Contract Manager shall have sole discretion in:

- 1) Determining the scope of Contractor's usual day-to-day work

- 2) Determining requirements of work that may be outside the scope of usual day-to-day work
- 3) Determining Contractor's ability to perform work outside the scope of day-to-day work
- 4) Decision to provide or deny consent

Said written consent, if granted, shall not be an evergreen consent. Written consent shall be obtained prior to performing work in each instance. Failure to obtain said written consent shall be deemed to constitute unassigned and unapproved work and shall not be billed to City.

- C. Contractor shall not bill for any time not spent on the job site regardless of the billing method.

3. Construction Requirements

- A. All work shall be completed in accordance with, but not limited to:
 - 1) City's specifications that shall be provided by City.
 - 2) City's safety requirements and all Safety Rules published in City's Safety Manual (available upon request). Contractor must abide by these requirements and rules at a minimum. Contractor safety requirements and safety rules take precedence only if they exceed City's and OSHA's requirements and rules.
 - 3) All Federal and/or State Regulations
 - 4) Special Instruction and drawings included in the project package.

Any requested printed materials may be made available to Contractor electronically. Contractor shall be responsible for printing, binding and distribution.

- B. For any and all assigned work, Contractor's crew shall at all times provide personnel who are properly equipped, properly trained and qualified to perform the task.

Crew members who are qualified as foreman, journeyman, "hot apprentice" or "cold apprentice" shall be equipped and able to climb.

- C. For overhead construction, maintenance and restoration, Contractor shall field a five (5) man crew and shall maintain the following fully functional equipment::

- 1) One (1) Crew truck
- 2) One (1) Bucket truck/Material Handler
- 3) One(1) Easement/Backyard/Alley Machine.
- 4) One (1) Digger truck with Pole Trailer

- D. For overhead construction, maintenance, and restoration, Contractors shall field a five (5) man overhead distribution crews with a minimum of the following fully trained and qualified classifications:

- 1) One (1) Working foreman which shall be qualified as an overhead distribution journeyman lineman and shall be expected to perform work
- 2) Two (2) crew members who shall be qualified as an overhead distribution

journeyman lineman

- 3) One (1) crew member qualified as a distribution overhead Lineman B (also known as a "hot apprentice") or overhead lineman C (also known as a "cold apprentice")
 - 4) One (1) crew member qualified as distribution overhead ground man, or Operator
- E. Should Contractor's crew fall below the required contingent specified above, work shall immediately cease. Contractor shall immediately notify City's Contract Manager of the deficiency and open discussions of work that the remaining crew contingent may perform safely and productively. City assumes no responsibility to find other work the remaining crew contingent can perform nor shall City assume any responsibility for compensation of any time, equipment, expenses, or any other losses by Contractor resulting from an understaffed crew's inability to safely and productively continue work.

Contractor assumes all responsibility and liability for any operational and financial issues that result from Contractor's failure to maintain a viable, fully staffed and qualified crew. Contractor shall not bill for any time, equipment or other expenses during the cessation of work due to the failure to maintain a viable, fully staffed, qualified and productive crew

Contractor shall be responsible for any losses incurred by City due to failure to maintain a viable, productive crew contingent. The method of reimbursement to City method shall be at the discretion of City's Contract Manager.

Example: City has made arrangements for a flagging crew. Contract crew falls below the requirement to be able to continue work. Contractor fails to notify City in time to cancel the flagging crew and City incurs the cost. Contractor shall be responsible for the cost of the flagging crew until such time as other arrangements can be made

Contractor shall not bill for idle equipment due to lack of qualified and available personnel to operate said equipment.

Contractor shall not bill for equipment that is non-functional without approval from City's Contract Manager

In the event there are multiple crews on City's facilities by same Contractor, Contractor shall not reassign any crews, crew members, or equipment to any other crew in order to meet minimum crew or equipment requirements without receiving prior approval of City's Contract Manager.

Contractor shall not assign crew members or equipment, other than the requested personnel and equipment, to any crew with the expectation of allowing said individuals or equipment to complete the forty (40) hour work requirement. Contractor may do so, without City's Contract Manager's prior approval for the benefit

of the Contract employee or Contractor but in no case shall City be billed.

Example: Crews A and B are normally four man crews. Crew A gets down to a two man crew and no longer meets the minimum crew requirement and no other work is available that a two man crew can safely or productively perform. Contractor shall not move crew members or equipment from Crew A onto Crew B so that the two man crew members can complete the workweek with the expectation of billing for the two Crew A member's time. without receiving City's Contract Manager's prior approval.

Contractor may do so for the benefit of the crew members or Contractor's benefit without City's Contract Manager's approval but shall not bill for the time or equipment from Crew A

- F. All underground construction, maintenance, and service work shall be staffed appropriately for assigned work to be performed safely and productively. If at any point in time Contractor fails to maintain the required contingent, work shall immediately cease. Contractor shall immediately notify City's Project Manager of the crew deficiency and open discussions of work that the currently on-site crew contingent may perform safely and productively.

Contractor shall be responsible for any losses incurred by City due to failure to maintain a viable, productive crew contingent. Reimbursement method shall be at the discretion of City's Contract Manager.

- G. Equipment shall be maintained in a manner to maximize safe and productive operation. Contractor shall maintain all equipment such that it is in full working order at all times while being billed.

City shall not compensate for mechanic labor, mechanic equipment or parts to maintain or repair equipment including but not limited to tire maintenance.

Equipment that is non-functional shall not be billed during the time the equipment is non-functional. Contractor shall plan and execute work plans in a manner to allow for equipment malfunctions as best possible so that work may safely and productively continue.

Any routine maintenance shall be done at times that shall not interfere with City's work requirements. Any equipment removed from service for required or routine maintenance shall not be billed to City.

Should an equipment malfunction occur that does not allow the crew to continue work safely and productively, the crew shall cease work immediately. Contractor shall immediately notify City's Project Manager who shall make the determination if the loss of equipment impacts safety or performance. City's Contract/Project Manager

may at their discretion direct work to cease until such time as the equipment is repaired or replaced. City will make every effort to assign other work to the crew that can be performed using remaining functioning equipment if such work is available.

City assumes no responsibility to find other work the crew may perform nor shall City assume any responsibility for compensation of any time, equipment, other expenses, or other losses resulting from Contractor's failure to maintain fully functioning equipment. Contractor shall not bill for any time, equipment or other expenses during the cessation of work due to the failure to maintain fully functional equipment.

EXCEPTION: Should equipment become non-functional due to any action of a City Representative (example: dragging equipment into a job site solely at City's request when other options are available), City shall continue to compensate Contractor for time and equipment while standing by for repairs if no other suitable work is available that can be performed by the remaining personnel and equipment

- H. Contractor shall maintain records necessary to update material records and line equipment records necessary to maintain and update City's records and mapping system. These records requirements shall be specified by City's Project Manager
- I. Contractor shall not initiate modifications from the project's original design. Modifications must receive prior written approval from City's Project Manager or Engineer or City's Contract Manager. Failure to receive prior approval that results in work that does not meet City's specifications and requirements shall not be compensated. Upon request of City's Contract Manager, Contractor shall perform all work required to correct said work to City's satisfaction at Contractor's expense.
- J. City recommends that Contractor keep a job journal in order to document any issues related to projects as well as aid City in any audits. This is particularly important when working government mandated projects such as highway projects.
- K. "Red line" prints and Job Change Orders documenting all changes shall be approved by City's Project Manager. City's Contract Manager reserves the right to designate a specific approval schedule of these changes such as weekly
- L. If City's Contract Manager requires hazard assessments, forms and information shall be provided prior to start of work

4. Additional Requirements

- A. Prior to placing or removing a crew(s) or crew member(s) for any reason onto or removing from City's property, Contractor shall notify City's Contract Manager. Contractor shall immediately notify City's Contract Manager of any crew changes for any reason.

Contractor shall make available to City's Contract Manager, upon request, all training records of employee(s) being placed on City's property. Contract employees shall not be placed in a classification that cannot be justified by Contractor either by training records or documented on the job training.

- B. At City's Contract Manager's request, Contractor shall provide a roster including all personnel and equipment working within requestor's jurisdiction. This roster shall detail at a minimum:
- 1) Name
 - 2) Contact information
 - 3) Classification
 - 4) Equipment assigned to crew or individuals that is being billed.

Failure to comply with the request shall preclude Contractor from billing for persons or equipment not listed.

Changes made to crew members or equipment shall be promptly reported to City's Contract Manager and a revised roster shall be submitted prior to any attempt to bill City. Contractor shall not bill for persons or equipment placed on City's property at Contractor's discretion for any reason.

- C. City's Contract Manager reserves the right to request removal of any contract employee from City's property for any reason. Upon receipt of this request Contractor shall immediately comply. Contractor shall immediately make any replacements necessary to maintain the required crew complement. Contractor shall not move crew members off one crew currently on City's property to meet the crew compliment requirement on another crew without the consent of City's Contract Manager.

- D. All Contractor employees who:
- 1) Are not currently working on City's property
 - 2) Have not worked on City's property within the three months prior to start of work
 - 3) For whom prior attendance within the three months prior cannot be documented
- must attend a safety/policy orientation program prior to commencement of work solely at Contractor's expense for crews not being compensated on a Time and Equipment Basis. For Contract personnel being compensated on a Time and Equipment basis, City shall compensate Contractor for labor only

This provision shall be exercised at City's Contract's Manager's discretion

- E. Work may require switching, tagging, and clearances. These activities shall conform to City's Switching, Tagging, and Clearance procedures. Contractor shall:
- 1) Insure that at a minimum two(2) crew members per crew are certified by City to switch, tag, and hold clearance. Crew members must be approved by City

- and be included in City's Switchman Database records.
- 2) If not certified as required, provide time for a minimum of two (2) or more qualified crew members to attend a one day training program.

This training shall be solely at Contractor's expense for crews not being compensated on a Time and Equipment Basis. For Contract personnel being compensated on a Time and Equipment basis, City shall compensate Contractor for labor only

For this purpose "qualified" is defined as personnel classified as journeyman lineman or higher. Due to the importance of the switching and clearance process, it is strongly recommended that Contractor allow all crew members to attend the training.

- F. City may require additional training due to safety infractions or violation of City's processes and procedures prior to allowing an employee(s) of Contractor to continue work or return to work on City's property.

Contractor shall make available all employees required to attend training at the time and location designated by City. All labor, equipment and other expenses associated with meeting this requirement shall be solely borne by Contractor.

- G. City may require additional supervision and/or safety personnel for new crews added to City's system or for crews with any safety productivity, or work practice infractions at contractor's expense.

Contractor shall promptly comply with this request. In the event that Contractor cannot or does not comply within the timeframe dictated by City' Contract Manager, City's Contract Manager shall have the option of stopping work for the crew until such time as the request may be fulfilled or removing the crew from the system. Contractor shall bear all costs associated with work stoppage or crew removal.

- H. Contractor Representatives shall attend meetings with all parties who have an interest in a project when requested. City will convene the meetings when applicable and may include representatives from other agencies. Regulations set forth by said agencies shall be adhered to at all times.
- I. Signage identifying Contractor as a Contractor for City, if applicable, must be removed from trucks when not performing City business.

- J. Work which City's Contract Manager agrees requires unusual equipment or equipment not owned by Contractor may authorize renting, leasing or subcontracting the equipment. Contractor shall obtain written consent of City's Contract Manager prior to renting, leasing or subcontracting the labor and/or equipment with the expectation of passing the cost to City. Responsibility for the use, care, and timely return of any rented or leased equipment rests with Contractor

Contractor acknowledges that there is the possibility of encountering rock or other difficult digging and is expected to supply a means to continue work without delay. Contract shall have a core barrel attachment available as a normal piece of equipment. Core barrels shall not be construed as special or unusual equipment.

Contractor shall not secure Contractor owned equipment that requires paid time away from City work to retrieve without prior consent of City's Contract Manager. City's Contract Manager shall have sole discretion in determining actual need, whether costs to secure equipment are reasonable, or if equipment rental is more feasible. Failure to obtain City's Contract Manager's prior approval shall preclude Contractor from recovering costs.

- K. During inclement weather, crew shall report to the show up location and remain on location until released by City's Contract Manager.

City shall compensate the crew for a two (2) hour show up time

- L. City's Contract Manager shall have the option to place the crew(s) on standby. City shall compensate Contractor on a time and equipment basis for a standby time that shall start at the time the crew was placed on standby up to a number of hours that shall not exceed twelve (12) hours per day. This twelve (12) hour maximum shall include the two (2) hour show up time.

City's Contract Manager shall have the option to extend the standby period past the twelve (12) hour maximum. Should an extension of the standby time occur, City shall compensate Contractor on a time and equipment basis for the standby period. Standby time shall be compensated on a straight time basis until the contract employee has exceeded the forty (40) hour workweek. All hours in excess of forty (40) hour shall be compensated as overtime.

Being placed on standby shall in no way limit the City's Contract Manager from assigning any other productive work to a crew that may not be limited to line construction and maintenance. Crew shall accept and perform this work or forfeit any standby compensation

All personnel and equipment placed on standby shall remain fit and available to immediately report for duty at any time while being compensated. City's Contract Manager may designate the location and terms of the standby period. Any personnel or equipment that fails to be fit and able to immediately report when notified shall

forfeit any compensation for the standby period. In the event that the availability of personnel is limited to the point that no safe, productive work can be performed, the entire crew shall forfeit any standby compensation.

- M.** At no time may Contractor's crews work more than sixteen (16) hours in any twenty-four (24) hour period for any reason without the prior written consent of City's Contract Manager. Work performed in excess of sixteen hours without proper authorization shall be deemed unauthorized and unapproved work and shall not be compensated. The sixteen (16) hour period shall include travel time.

Contractor shall not attempt to receive authorization for exceeding the sixteen (16) hour threshold retroactively.

In the event Contractor receives approval to work beyond the sixteen (16) threshold, Contractor's crews shall not report to work the following day until completing an eight (8) hour rest period.

- N.** Projects worked under Time and Equipment requirements shall receive additional scrutiny; therefore, upon request, Contractor shall be able to provide a written justification of all charges related to the project. Justification, if requested, shall include but is not limited to the following:

- 1) Number of people assigned to the project
- 2) Type of equipment on the project
- 3) Time required to complete the project
- 4) Justification of time spent on the project
- 5) Properly executed documentation requested by City's Contract Manager to justify any charges

Contractor shall not expect nor demand payment of any invoices until this documentation has been provided to City's Contract Manager and any disputes have been resolved.

- O.** Normal operating tools required to perform any distribution work are included in the hourly rates for the equipment in which they reside or in the corporate overheads. These items include but not limited to hand tools, hydraulic tools, chainsaws, safety related equipment, air compressors, generators, tampers, core barrels, etc. City shall not be billed separately for these tools during any work activities. Equipment rates stated on equipment rate sheets for these type tools should be omitted as items that are billable, whether listed on a rate schedule or not.

- P.** Should additional equipment, material, or services be required, Contractor shall notify City's Contract Manager. City's Contract Manager shall determine the means to secure the needed equipment, materials, or services.

In the event that City's Contract Manager approves Contractor to secure the needed equipment, material, or services, Contractor shall be permitted to recoup the actual cost plus ten (10%) provided that legible, complete documentation accompanies the

billing.

5. Call Out Work for On System Personnel

- A. Compensation for crews to travel to reach their equipment and return home shall be governed by the travel time stipulations in the "Restoration Activities" Section and shall only apply to crews who, in City's Contract Manager's opinion have traveled too far away from their assigned locations for an extended period-such as going home for the weekend or response would require an unreasonable amount of time to reach their equipment and/or work location.

Example: A crew has parked their equipment at the end of their scheduled workday. The crew had cause to travel home that night and plan to return the next morning to work. They are now three (3) hours away from their equipment. Due to crew availability, this crew is the best option. City's Contract Manager may allow travel time in accordance with the requirements within the "Restoration Activity Requirements" Section. Labor time shall be billed in accordance with terms, conditions, stipulations, and examples within that section. In the case where the full crew is not available, but City's Contract Manager deems that the available crewmembers will suffice the crew members answering the call out would be allowed to bill as a call-out.

Should City's contract Manager determine that the available crew members will not suffice and rejects the crew, no callout has occurred.

- B. Each call-out shall be deemed to be a separate event subject to the terms, conditions, stipulations, and examples within this section
- C. Call-outs for Off-System personnel shall be governed by the terms, conditions, stipulations, and examples within the "Restoration Activities" Section.
- D. If Contractor is pulled off of a scheduled job to do emergency work during regular hours the City's Contract Manager shall have the option of delaying the scheduled work or paying Contractor at the overtime rate to continue the scheduled project after normal work hours.

Also, if a contractor is pulled off of a scheduled job to do emergency work during regular hours, time charged to the emergency call will begin at the time the call is received which would include shut down time and the start back time from the scheduled job. Start back time may, at City's Contract Manager's discretion, include time spent returning the job to the point when left.

6. Completion Requirements

- A. Assigned jobs shall be completed on or before the scheduled completion dates. Any

deviation from scheduled completion dates shall be brought to City's Contract Manager's attention along with any necessary information to explain the delay.

- B. Contractor shall be responsible for any penalties or customer damages assessed against City due to Contractor's failure to complete work by the scheduled commit date. This responsibility will be waived so long as the process for requesting a delay is followed as noted above. Otherwise, Contractor shall reimburse City for these penalties or damages either by check, credit invoice, or the withholding from monies due Contractor within ten (10) business days of written notification to Contractor by City's Contract Manager.
- C. It is City's intention to allow Contractor to respond to requests for storm restoration when such response will not adversely affect City's work schedules or customer service. Contractor shall remain on City's property until released by City's Contract Manager.
- D. Failure to remain on City's property until released shall constitute abandonment of work and shall make Contractor liable for any damages or additional costs incurred by City to complete any work abandoned by Contractor.

Should Contractor abandon work for any reason, Contractor shall not expect nor demand payment on any abandoned work until such time as all abandoned work has been completed by other means and any damages or additional costs have been determined.

City shall recover any costs associated with abandoned work at the rate of cost plus twenty-five (25%) percent

7. Inspection Requirements

- A. City reserves the right to inspect work at any time. Deficiencies noted during these inspections shall be corrected at Contractor's expense immediately upon notification of the deficiency.

Should Contractor fail to correct any deficiency or decline to correct any deficiency, City reserves the right to correct said deficiencies by other means and seek reimbursement from Contractor. The method of reimbursement shall be at the discretion of City's Contract Manager and shall be at the rate of actual costs plus twenty-five percent (25%) for overheads. Reimbursements shall be made within ten (10) business days of notification by City's Contract Manager.

8. Job Acceptance

- A. Should Contractor decline or fail to correct any deficiency noted during the final inspection, City reserves the right to correct the deficiencies by other means. Costs

The method of reimbursement shall be at the discretion of City's Contract Manager and shall be at the rate of actual costs plus twenty-five percent (25%) for overheads.

Reimbursements shall be made within ten (10) business days of notification by City's Contract Manager.

- B. Job acceptance is contingent on the return of the entire job package with all properly executed documentation and required information to City's Contract Manager's Project Representative or Project Engineer prior to Contractor's release.

Job acceptance shall also be contingent upon return of any additional tools or material provided to contractor (such as poles, cross arms wire, keys, etc.)

- C. Contractor shall not bill, expect, or demand payment until Job Acceptance is complete

9. Clean Up Requirements

- A. Upon completion of the work, and before acceptance by City, Contractor shall remove from the job site all machinery, equipment, surplus and discarded materials, and rubbish. Contractor shall leave the site in a neat and clean condition satisfactory to City's Contract Manager.
- B. Cleanup shall be completed prior to the Final Inspection and Acceptance
- C. No monies shall be paid to Contractor until any deficiencies related to cleanup are resolved to City's satisfaction.
- D. Should Contractor decline or fail to correct any deficiencies related to cleanup, City reserves the right to correct the deficiencies by other means. Costs incurred for these corrections shall be reimbursed to City. The method of reimbursement shall be at the discretion of City's Contract Manager and shall be at the rate of actual costs plus twenty-five percent (25%) for overheads. Reimbursements shall be made within ten (10) business days of notification by City's Contract Manager.
- E. Cleanup shall include the repairs to all City or Customer property damaged during construction. This shall include but is not limited to ruts, fences, landscaping, etc made during the course of normal day-to-day construction and maintenance activities.
- F. Material lay down areas shall be clean and returned to an acceptable condition prior to final job acceptance. Should City have to resort to other means to meet this requirement City may recover from Contractor costs plus twenty five (25%)
- G. Unused materials shall be returned to stores in useable condition and in a manner that does not impede the ability to restock said material.

10. Specialty/Off Road Equipment

- A. When City provides specialty/off road equipment or services, Contractor shall not bill for the equipment or services or attempt to bill any form of adder for the equipment or service.

Contractor shall assume all responsibility for said equipment. It shall be returned to City promptly and in same condition as when Contractor received it, normal wear and tear excepted.

Specialty Equipment includes but not limited to:

- 1) Track buckets
- 2) Track Diggers
- 3) Backhoe
- 4) Backyard/Alley machines
- 5) Tractor/Trailer

- B.** Contractor shall not move specialized/off road equipment or personnel onto City's property or commence work requiring any specialized/off road equipment or specialized personnel with the anticipation of billing for same until receiving prior written authorization from City's Contract Manager. No retroactive billing or approvals shall be allowed.

NOTE: This provision is applicable at ALL times including restoration activities.

- C.** City shall not be liable for compensation of specialty/off road equipment or specialized personnel that is brought in as a result of Contractor's arbitrary decision or for Contractor's benefit.
- D.** All timesheets related to this equipment and personnel shall be signed by City's Contract Manager and submitted with billing

11. Mobilization/Demobilization

- A.** Mobilization and Demobilization charges for personnel and equipment shall only be applicable to personnel's time, equipment, and mileage for crews not currently working on City property (Off System) regardless of the type of work being performed or billing method (T&E, Bid, Lump Sum, etc.) and shall only be billable when:
- 1) Responding to requests for restoration assistance subject to conditions in the "Restoration Requirements" section.
 - 2) Moving personnel and equipment from Off-System to City property to perform non restoration work that is less than six (6) actual week's duration. Contractor shall not bill mobilization or demobilization until it has been determined that arrival and release has taken place in six (6) weeks or less. If work exceeds the six (6) week period for any reason, no mobilization or demobilization charges may be billed. The six (6) week duration shall apply to the duration of the project or work assignment(s) as a whole and shall not apply to the length of time an individual or equipment is present on the job site.

No mobilization/demobilization or per diem shall be billed on lump sum or bid projects

- B.** City will pay sixty (\$0.60) cents per mile for driven equipment classified as a pick-up

truck or 1-ton flat bed or smaller and one dollar ten cents (\$1.10) per mile for driven equipment classified as larger than one (1) ton that is not specifically excluded from billing in other sections. Neither rate shall be paid for equipment being hauled

- C. Actual mobilization and demobilization time and mileage shall be billed, but at no time shall travel time exceed a maximum of sixteen (16) hours per twenty-four (24) hour period.
- D. Billable time and mileage shall be determined by a mapping system (such as Google Maps or MapQuest) by the shortest route shown from departure city to return city.

City recognizes that travel time and mileage may differ from the times noted in any mapping system due to stopping for meals, fuel, and rest stops; however, these times shall be noted and accounted for. City reserves the right to deem time and mileage over those noted in the aforementioned mapping systems as excessive and deny any excessive charges. Contractors charging time and mileage deemed excessive shall be restricted to the times and mileages noted in the aforementioned mapping systems.

- E. At no time shall the travel time and mileage differ significantly between travel to an event and the return trip provided contractor travels directly from their normal work location and returns directly back to their normal work location.

Contractors that are released and subsequently report to another work location other than their normal work location shall not bill any demobilization or expense charges to City.

- F. Time and mileage as calculated by the aforementioned mapping systems from the current work location to City for restoration purposes shall only be billable if the crew actually arrives in City.

Crew diverted to another utility prior to arrival shall cease any charges at the time of diversion. Any billing beyond this point shall become the responsibility of the requesting utility

Demobilization charges for crews released from City's property that travel to an event on another's system shall become the responsibility of the requesting party.

- G. Mobilization/Demobilization shall be done on straight time rate unless City's Contract Manager provides prior approval to any other arrangements
- H. Mobilization/Demobilization reimbursements allowed per Section 11(A) for projects worked on Time and Equipment compensation basis shall utilize the time and equipment rates included on the Time and Equipment Pricing Template.
- I. Special equipment being transported and the equipment does not require a driver to operate during travel, equipment shall only be billed the hourly rates. Equipment that

requires a driver to operate during travel may be billed both hourly labor and mileage rates.

- J. During work days between the mobilization/de-mobilization periods, special equipment and equipment used to transport/haul any special equipment will be billed hourly rates when working projects on a Time and Equipment basis. Transporting equipment shall only be billed while on City's property for the same hours the Special Equipment is allowed to be billed.

12. Per Diem

- A. It is not City's intent to provide per diem compensation for personnel deemed On System when performing normal, routine, or minor restoration work.

City's Contract Manager shall have discretion on when per diem is appropriate in any case.

When City's Contract Manager approves per diem it shall be at the rate of One Hundred Forty-Nine (\$149.00) dollars per day per approved personnel. This payment shall be the total per diem compensation for lodging, meals, and incidentals.

On any occasion that City, for their convenience, provides lodging or food, Contractor shall not attempt to bill for any other costs or expenses relating to crew support.

Contractor receiving per diem shall not bill for any additional expenses.

Contractor shall reimburse City for any damage or expense charged to City by any Contractor employee regardless of per diem or City provided lodging. Method of reimbursement shall be at the discretion of City's Contract Manager. Contractor shall assume responsibility of resolving any issues. Said issues shall be resolved to City's satisfaction prior to Contractor receiving any current or future payments. Should Contractor fail to resolve any issue, City reserves the right to resolve and withhold any monies up to the settlement value due Contractor.

Should City provide lodging and food and lodging and any contract employee not utilize the services, Contractor shall not bill for these expenses.

- B. Per diem shall be billable when deemed appropriate by City's Contract Manager and Contractor has received prior written approval. Per Diem is not intended for use when Contractor is performing normal, routine construction and maintenance or minor restoration

Per diem is intended for restoration events only for Off System personnel.

At no time shall per diem be allowed for lump sum, bid projects

City's Contract Manager shall have the option of allowing per diem payments at

anytime should circumstances dictate. This option shall rarely be exercised.

- C. Per diem rates included in Contractor rate schedule shall be all inclusive. At no time shall approved per diem billing exceed this rate

Per diem is all inclusive of lodging, food, and incidental expenses, When per diem is being paid, no other expenses for personnel shall be allowed

- D. Per Diem shall not be billable for restoration activities performed by On-System crews that do not require crew movement away from their current domiciled area as these are generally small events and does not materially affect lodging and meal arrangements already secured by Contractor.
- E. Billing for mobilization, demobilization or per diem that does not meet the requirements in this section shall be denied.
- F. When City provides lodging and meals, no per diem shall be billable. Crew refusing to accept either lodging or meals shall be precluded from billing per diem
- G. Any other expense that Contractor believes is a legitimate, reimbursable expense that is not specifically associated with meals, lodging or incidentals and has not been specifically disallowed must be approved in writing by City's Contract Manager prior to incurring the expense.

Expenses not reimbursable at any time regardless of billing method or type of work include but is not limited to:

- 1) Cell phones and pagers. These costs shall be included in the overheads. Contractor is expected to have the means to communicate during any event.
- 2) Phone calls shall not be charged to hotel/motel rooms.
- 3) Rentals, such as movies, games, VCR's, etc..
- 4) Room service charges (such as, food, alcohol, soft drinks, etc.
- 5) Charges for tobacco, alcohol, snacks, or other personal items
- 6) Charges for personnel protective items, tools, tools, or equipment (i.e., hardhats, rainwear, lighting, etc
- 7) Any other expense that has not received prior written approval by City's Contract Manager .

If Contractor has not received documented prior approval, the expense shall not be reimbursed. Receipts and documentation verifying the approved expense shall be submitted with Contractor's invoice.

13. Restoration Requirements

- A. Restoration utilizing crews currently on City's property or crews from the same Contract organization shall be governed by this agreement
- B. For Off System personnel not receiving per diem during restoration events:

- 1) Following check-in on City's system, if morning meal is provided at the place of lodging, the paid starting time will begin when departing from the place of lodging after the meal. If Contractor's employees are transported by City to another location for the morning meal, the paid time will start when leaving the lodging location.
 - 2) If dinner meal is provided at place of lodging, paid time will stop upon arrival at the place of lodging and meal time shall not be include in billable time. If employees are transported by City to another location for dinner meal, the paid time will stop upon arrival at place of lodging.
- C. As most noon day meals are fairly short and often happen at the job site, billable time will be allowed. In any instance no more than one (1) hour shall be paid for noon meals.
- D. Labor and equipment for crews on standby shall be paid for the standby period up to a maximum of twelve (12) hours per day. Hours worked, including any applicable standby time shall at no time exceed a maximum sixteen (16) hours without the prior written approval of City's Contract Manager.
- E. Standby is defined as remaining at a designated site and not performing restoration or any other work. Crews may only be placed on standby at the written request of City's Contract Manager.
- F. Compensation for standby time shall cease when crew is released from the requirement to remain at the designated site or is assigned any other work.
- G. For standby time to be billable, all personnel and all equipment shall:
- 1) Remain readily available and fully fit to immediately report to work if called during the standby period. Failure to be available and/or fully fit to report to work immediately shall negate Contractor's right to bill for any portion of the standby time for the entire crew and associated equipment.
 - 2) Remain at the designated site or report to another site as directed by City's Contract Manager and remain at that site for the full standby period.
- H. Standby time shall be exclusive of time spent traveling to reach equipment.
- I. City shall only compensate for restoration hours worked. Hours worked shall not exceed sixteen (16) hours without the prior written approval of City's Contract Manager. This requirement includes all work hours including mobilization and demobilization. Hours worked in excess of sixteen (16) hours in any twenty-four (24) hour period that has not been authorized by City's Contract Manager shall be deemed as unauthorized, unapproved work and shall not be compensated unless No retroactive approvals shall be allowed.

Contractor shall not bill for a sixteen (16) hour work day as a standard operating procedure. Only actual hours worked shall be billed.

- J. City reserves the right to specify the type of equipment required to restore service as expeditiously as possible. Normal equipment (standard equipment) for Distribution Line activities include distribution rated digger derricks, distribution rated bucket trucks, distribution rated material handlers, pick-up trucks, pole trailers and material trailers.

Equipment that is not considered normal equipment, and which is determined by City's Contract Manager to be unnecessary for storm restoration work, shall not be paid for hours or mileage. Driver or operator time spent in transporting non-approved equipment shall not be billable to City. Contractor shall not be compensated for any unnecessary, unapproved personnel or equipment moved onto City property.

- K. Equipment requested by City to be released and transported away from City (either prior to the crews being released or at same time), then City shall be responsible only for the hours to de-mobilize back to original location (de-mobilization hours not to exceed the mobilization hours). Hours for equipment left idle after being released from City (prior to de-mobilizing) shall not be billable to City.

Mobilization/De-mobilization shall be governed by all terms, conditions, stipulations and examples within section entitled "Mobilization/Demobilization".

- L. Billing for any special equipment or any other equipment shall cease upon release regardless of whether the equipment is removed from City property or not.
- M. City shall not be billed for idle, non-operable equipment, or any equipment left behind.

City assumes no responsibility for this equipment. Equipment left in any manner that interferes with City's or customer's activities may be moved by any means necessary at Contractor's expense

- N. Travel time shall not exceed the maximum sixteen (16) hours per day without prior approval of City's Contract Manager.

Travel time to reach Contractor's equipment in order to respond to restoration requests. Billing shall only be allowed for labor. No equipment used in travel shall be billed. Compensation for travel time shall be as follows:

- 1) Both On System and Off System Crews called for restoration work shall be compensated for travel time from their home to reach their assigned equipment not to exceed maximum of four (4) hours travel time per crew member to reach their normal assigned equipment and time spent not to exceed a maximum of four (4) hours to return to their home after returning the equipment to its original assigned location.

2) Time spent to ready equipment and/or job site ready for travel such as offloading material and/or making current job site safe to leave may be billed. This time shall start upon arrival of the complete crew contingent at site where the normal assigned equipment is parked.

O. Contractor seeking to bill for allowable travel time shall abide by the following:

1) Contractor shall only bill for actual travel time for each crew member.

Example: Two crew members are one hour way from their normal assigned equipment site while the other two crew members are two hours away.

Two crew members shall be allowed one (1) hour travel time and two crew members shall be allowed (2) hours travel time. Time spent waiting for the full crew contingent to reach their normal assigned equipment shall not be billed.

2) Travel time allowed to return home shall not exceed the time allowed to first reach equipment. Google Maps or MapQuest travel time and mileage shall be compared to time billed and shall not be excessive in comparison.

3) Contractor shall notify City when the full crew contingent has assembled at the site of their normal assigned equipment. Contractor shall advise City of any preparation work required to make current work site safe to leave and provide firm time when crew will be ready to deploy.

4) Failure to provide the information required in this Section shall limit Contractor to billing for travel time only.

5) Travel time in this section shall apply only to restoration activities and shall in no way be construed as subject to any additional requirements referenced in the Time and Equipment Requirements.

Travel time shall in no way be deemed as standby time or as a call--out.

P. Travel time shall be billed at straight time rates for personnel who have not completed the forty (40) hour workweek requirement. Overtime rates shall only apply when crew has exceeded the forty (40) hour workweek requirement.

Q. City provided lodging and/or meals shall be the exception. Contractor should plan on utilizing per diem for expense reimbursement.

City may, at their discretion, provide lodging and/or meals for contract employees not currently on City system (Off System) during restoration events. City provided lodging and/or meals may be in the form of a hotel/motel, temporary housing or a temporary structure facility. Meals may be at designated facilities or delivered on site

Depending on the circumstances (i.e. severity of the storm) ideal lodging and/or meals may not be provided. It is intended that lodging and/or meals provided by City will be the only alternative to the Contractor. Any personnel not accepting provided lodging and/or meals shall not bill per diem or any other expense

R. City shall rarely have a need to provide fuel once Contractor arrives on City's service

territory following initial check-in. Contractor equipment must be clearly marked as to the required fuel type as City may fuel vehicles after work hours where appropriate.

If fuel tankers are requested from Contractor by City, written email documentation for approving tankers and gallons of fuel must be obtained from City's Contract Manager in writing and must be attached to billing documents submitted to City.

As equipment rates include fuel costs, should City provide fuel to Contractor, City reserves the right to bill Contractor for the provided fuel plus 5% markup. Fuel to be billed at City cost. The method of reimbursement shall be determined by City's Contract Manager.

At no time may Contractor bill City for fuel.

- S. City, at its discretion, may offer to provide laundry services during extended restoration events. If laundry services are provided, City shall not be responsible in any way for articles lost, stolen or damaged. If City does not provide laundry services during a restoration event a laundry allowance may apply when approved by City's Contract Manager. This allowance shall not be available for personnel being paid per diem. Said allowance is as follows :
- 1) A \$30 laundry allowance per employee can be billed to City following each work period. Work period is identified as six (6) consecutive work days engaged in the restoration event for City.
(Example for each employee: working 10 consecutive days, only one laundry allowance will be billable; working 16 consecutive days, two laundry allowances will be billable.
- T. Invoices submitted for restoration work shall conform to all requirements set forth by City's Contract Manager. Examples of required documents are but not limited to:
- 1) Copy of signed Check-In Roster if required by City
 - 2) Copy of signed Storm Crew Log if required by City
 - 3) Copy of City Crew Lead Checklist if required by City
 - 4) Timesheets signed by crew foreman and City's Contract Manager or other City representative authorized by City's Contract Manager.
- U. Responding to a restoration event does not constitute a call-out.
- V. Overtime shall be applicable only when an individual has exceeded the forty (40) hour workweek requirement.

14. Permits and Environmental

- A. The Contractor shall obtain and be responsible for costs associated with any and all permits not supplied by City but necessary to perform the Work detailed in job package or during restoration events. Contractor shall provide verification to City's Representative(s) that all necessary permits have been obtained prior to

commencement of any work.

- B. Contractor shall be aware of and conform to all applicable environmental regulations and laws relative to the project.
- C. Contractor shall be responsible for any fines, damages, and clean-up associated with failure to comply with any regulations, environmental accident within their control, or failure to obtain required permits
- D. Contractor shall comply with all State and/or City traffic control requirements. Any fines or damages resulting from failure to comply shall be the responsibility of Contractor.
- E. Contractor shall contact the local One Call prior to any digging or excavating to insure that any underground facilities at the site are not damaged by digging and/or excavating. Damages caused by failure to secure the locate shall be the responsibility of the Contractor. Contractor shall cease work and notify the Locating organization immediately upon causing damage. Contractor shall cooperate with any investigative request of the locating organization.
- F. Contractor is responsible for any and all damages to real or personal property and any bodily injury while performing work. Contractor shall repair or settle any damages within a time frame that is acceptable to the injured party and City

In the event that Contractor does not settle claim or fails to negotiate a settlement in good faith and City is required to provide settlement or liaise, Contractor shall reimburse City for all expenditures related to these activities. Method of reimbursement shall be at City's Contract Manager's discretion.

15. Intention of Job Package Contents

- A. The drawings, specifications and attachments contained in each Job Package describe the Work that the Contractor shall undertake in full compliance with the Plans, Proposal and Contract. In case of conflict between the data, specifications, or drawings found in this package, the Contractor shall notify City's Project Representative immediately. City's Project Engineer shall be assigned to resolve these conflicts, should any be arise, in a timely manner.

16. Materials

- A. Materials and supplies not furnished by City include but are not limited to:
 - 1) Consumables (such as bottled water, Gatorade, etc.)
 - 2) Any type of personal protective equipment (such as safety glasses, work gloves, flagging vests, Personal Voltage Detectors, etc.)
 - 3) Rubber goods
 - 4) Hot line tools
 - 5) Hand tools
 - 6) Any other materials or supplies not necessary or directly related to performing the current work assignment

If at any time Contractor is found to have removed any of these types of materials or supplies from City's stores, Contractor shall be billed and shall reimburse, at City's Contract Manager's discretion, City for the replacement costs of these materials or supplies plus a twenty-five (25%) percent overhead and mark-up fee.

- B. City shall furnish materials for the construction as noted within the construction data of the job package. Material provided by City will be made available to the Contractor at a designated location. All materials and equipment obtained by Contractor from City shall be properly stored and protected by Contractor to prevent loss or damage. Responsibility for these materials shall be vested in the Contractor when Contractor takes delivery of the materials from City's storeroom(s) or other delivery point.

Upon request, Contractor shall report in writing to City's project representative all material received by Contractor from City. This written report should also include any verifiable shortages or damages of materials at time of receipt by Contractor.

- C. Unless otherwise specified, all unloading, sorting, hauling, handling, storing and care of City-furnished materials shall be performed by the Contractor. Any associated costs incurred resulting from these aforementioned duties regarding shall be included in the Proposal bid pricing submitted in the Request for Proposal.
- D. Contractor shall maintain accurate records of all City-supplied material on hand, and the disposition and use of such materials. Contractor will be charged the replacement costs, plus twenty-five (25) percent for overhead, for any City-supplied materials lost after receipt by Contractor unless in the case of verifiable, reported theft.

Material damage after receipt by Contractor and replaced by City shall be reimbursed at the rate of cost plus twenty-five (25%) percent.

- E. Upon completion of work, or as soon as it is apparent that certain materials will be in excess of the job requirements, the Contractor shall at no extra cost to the City, haul, sort by sizes and kind, reassemble to delivery condition as necessary, and store such excess materials at the City's designated location.

17. Safety Requirements

- A. Contractors performing base load work or restoration work shall comply with OSHA requirements at all times. Contractor shall acknowledge and agree to the following:
 - 1) Provide City's Contract Manager with any accident reports for recordable accidents within eight (8) hours of accident. If it is a fatality, lost time, potential lost time or electrical contact, reporting shall be done immediately to City's Contract Manager
 - 2) Ensure any employee suspended from any City's site for a safety violation is promptly reported to the City's Contract Manager and ensure employee(s) is restricted from ALL City sites until suspension is completed.
 - 3) Report any loss of load event immediately to City's Contract Manager

4) If requested, participate with City personnel in any accident or loss of load investigations on City's property in accordance with City's schedule.

B. If required by City's Contract Manager and/or Contractor, prior to starting work each day, contractor shall conduct a hazard assessment of the work site and identify mitigation steps that will be performed in an effort to remain accident free or to prevent loss of load events. Additional hazard assessments shall be performed any time the scope of work or conditions change. All hazard assessments shall be documented and provided to City's representative upon request.

C. Contractor shall submit to an initial safety/equipment audit prior to commencement of work when requested and other audits as required by City's Contract Manager. Contractor shall immediately correct any deficiencies noted at Contractor's expense.

Contractor shall provide a qualified, safe workforce. At City's request, Contractor shall remove any worker deemed inadequate to safely and or productively perform the required tasks from City's property. Should a worker be removed, Contractor shall replace the personnel in a timely manner with a qualified individual.

18. Requirements for Base Load Crew, Lump Sum, and Bid Work

A. Crews shall be considered to be On System, base load crews upon arrival to commence routine construction and maintenance work regardless of the duration of work. Crews working lump sum or bid work shall be defined as On-System crews.

Bid work shall be defined as crews working projects for which bids were taken and contracts awarded for specific projects without regard to the duration of the projects.

19 Confidentiality

A. This document and associated rates, compensation agreements, or any proprietary material provided to Contractor shall be held in confidence by City and Contractor

Contract Managers and Designated Representatives

Role	Name	Physical Address	Office Phone	Cell Phone	E-Mail

APPROVED BY:

CITY OF NORTH LITTLE ROCK

By: _____

Title: General Manager

Date: _____

ATTEST:

DIANE WHITBEY, CLERK

ACCEPTED BY:

CONTRACTOR

By: _____

Title: _____

Date: _____

General Service Agreement No _____
Effective Date _____

EXHIBIT B
TO
MULTIPURPOSE MAINTENANCE, MODIFICATION AND
GENERAL SERVICES AGREEMENT
COMPENSATION AND TAX TERMS
TIME AND EQUIPMENT
CONTRACT ORDER FORM

Contract Order No _____
Effective Date _____

1. Additional Compensation Terms and Conditions

- A.** All rates shall remain effective throughout the term of this contract order.

Changes or additions to rates shall be negotiated and documented with a properly executed contract amendment prior to any billing that utilizes any change.

- B.** Should rates for equipment or personnel that have received City's Contract Manager's prior written approval not exist in this contract, a contract amendment shall be properly executed prior to bringing said equipment or personnel onto City's property. Contractor may not bill for equipment or personnel without a properly executed amendment. No retroactive billing shall be allowed.

- C.** Time and Equipment compensation shall be at the hourly rates at hourly rates set forth in the Hourly Rate document attached hereto and incorporated as Appendix 1.

On System Labor rates shall be effective across City's system for Contract crews working on any project within City's territory.

Crews shall be considered to be On System upon arrival to commence construction and/or maintenance work regardless of the type of work, duration of work, or compensation method. On System labor rates shall also apply for these crews during restoration work.

The normal work schedule shall be an eight (8) hour day Monday through Friday. City's Contract Manager shall set the daily work hours. City's contract manager shall have sole discretion in approving any alternate or modified work schedules.

Any accepted Off System Storm Labor Rates shall be effective to only those contract crews who are not currently working within City's service territory. When applicable, Off System or Storm Labor rates shall only apply to restoration work. Off System crews

held over for any other work such as clean-up shall be compensated at the On System labor rate. Equipment rates shall remain the same for both On System or Off System crews for either routine or restoration work.

- D. Crews shall be compensated at the accepted bid price for the initial forty (40) hour work week and at the accepted overtime rate for hours over forty (40) during the workweek. Contractor shall advise City's Contract Manager of the days seven (7) day, twenty-four (24) periods which constitutes their work week.

City, in coordination with Contractor, reserves the right to schedule work outside the normal work hours in cases where outages must be arranged. Work being performed on time and equipment shall be paid at straight time rates and the crews will be off at another time during the week. In cases where time off cannot be allowed at another time and crew exceeds forty (40) hours in the workweek, Contractor shall be compensated for hours in excess of forty (40) at the overtime rate.

No provision in this document shall relieve Contractor of the responsibility to comply with any specifications of the Fair Labor Standards Act (FLSA). It is contractor's sole responsibility to compensate Contractor's employees in a manner that shall comply with or exceed the requirements of the FLSA.

- E. Trailers of all kinds are deemed to be an integral part of the equipment with which it is used or necessary to haul material. No trailers shall be billable to City.
- F. Rate schedules include classifications below the classification of General Foreman. Any accepted pricing shall include all overheads Contractor wishes to recoup. At no time shall any classification other than those accepted shall be billed. Contractor shall not classify any personnel in a classification that they do not perform on a daily basis or are known to regularly perform functions other than their classification attempted to be billed.

Examples includes but is not limited to:

- 1) Spouse listed as corporate officer, but other spouse is recognized as an additional owner or manager
- 2) Parents listed as owners or corporate officers while a child, children or other person(s) are known to operate the business
- 3) Owner, Management, supervisory, or other support functional positions who are known to perform these function on a daily basis
- 4) Personnel assigned to positions that they do not hold on a daily basis

Example:

Assigning and attempting to bill a person normally an office worker as a groundman

City's Contract Manager reserves the right to waive this stipulation and compensate the General Foreman and higher should conditions, in their opinion, warrant.

Personnel including, but not limited to owners, officers, safety, mechanics, administrative, logistics, or other support shall not be billable to City regardless of the work the person is performing. Temporary classifications shall not be billable to City regardless of the function being performed

Example: Crew is understaffed and a regional supervisor steps in to fill a vacant lineman slot. This supervisor' salary is already being paid by corporate overheads. The decision to step into the job is only to allow continuation of work and compensation for the remaining crew. Compensating the supervisor would constitute double billing and shall not be allowed.

No business or administrative costs associated with providing any services to City shall be billable

- G. Equipment rates are not eligible for any overtime billing for any reason.
- H. City shall compensate the contract crew only for the approved crew and equipment contingent. Contractor may move additional personnel and equipment on site for Contractor's benefit without City's Contract Manager's approval, but shall not bill City for any personnel or equipment that has not received City's Contract Manager's approval as being necessary to perform the work
- I. To the extent the Fair Labor Standards Act permits any of the premiums below to be credited towards statutory overtime due, City shall be entitled to such credit, which will reduce the amount of overtime due under this Section.
- J. City recognizes the following holidays:
 - x New Year's Day
 - x Martin Luther King Day
 - x President's Day
 - x Memorial Day
 - x Fourth of July
 - x Labor Day
 - x Veterans Day
 - x Thanksgiving Day
 - x Day after Thanksgiving
 - x Christmas Eve
 - x Christmas Day

City offices shall be closed these days

Contractor shall provide City's Contract Manager with their paid holiday schedule.

City acknowledges that Contractor does not recognize all of the above listed City holidays. On days that are not recognized by Contractor, City shall, at City's Contract Manager's discretion:

- 1) Provide crew(s) with work and access to required materials to perform work
- 2) Allow crew to be off that day with pay at the regular rate in rate schedule for a maximum of eight (8) hours. This shall only apply to the crew member labor rate. No equipment shall be billable.

Holidays that are paid by Contractor shall not be billable to City.

When crew is required to work on a Contractor recognized holiday, City agrees to pay for classifications listed on the accepted rates in the amount of overtime rate for holidays listed above without Contractor's employee exceeding the forty (40) hour straight time workweek requirement.

When required to work on Contractor recognized holidays, a maximum of eight (8) hours shall be paid at the overtime rate. The actual hours worked shall apply to the forty (40) hour workweek to determine any future overtime for that workweek. Applicable hours for premium holiday pay shall commence at twelve (12:00) midnight on the actual holiday and shall end at twelve (12:00) midnight.

Premium holiday pay billed to City is intended to benefit Contractor's employees and as such shall be passed through to Contractor's employees. City reserves the right to conduct audits of Contractor's records at any time and to demand return of any premium rates that have been incorrectly paid under this contract or any premium rates paid to Contractor that was not passed through to contractor's employees.

Contractor shall reimburse City within thirty (30) days of receiving written demand from City for such reimbursement in the method determined by City's Contract Manager.

- K. City reserves the right to allow Contractor employee to take time off early in the same workweek in lieu of premium pay upon completion of a forty (40) hour workweek. Any premium pay due employees are the sole responsibility of Contractor and shall not be billed to City. City reserves the right to declare an end to the workweek upon completion of forty (40) hours regardless of the straight time or overtime billable hours.

Any hours worked in excess of forty (40) hours straight time for the workweek shall be compensated at the overtime rate provided:

- 1) Work was not done at Contractor's request
- 2) Work is not done as a part of an approved alternate work schedule (Example – working eight (8) days on and six (6) days off).

Hours worked at Contractor's request or while working an approved alternate schedule shall be billed to City at the straight time rate only. Any premium pay due employees are sole responsibility of Contractor.

- L. Overtime shall receive prior approval of City's Contract Manager in order to be billable. No overtime shall be billed if:
- 1) Said work is done at Contractor's request or unilateral decision by Contractor
 - 2) Contractor has requested the extended workweek to allow crew to take off at another time.
 - 3) Work is done on Saturday or Sunday as a part of an alternate work schedule (Example: working eight (8) days on and six (6) days off). Any premium pay due Contractor employee's in order to comply with the FLSA shall be the sole responsibility of Contractor.
 - 4) Work is done on Saturday or Sunday as a part of a person's normal workweek schedule.

Example: A crew's normal workweek begins on Sunday and ends On Saturday. Work done on Sunday or Saturday would be a part of the crew's scheduled workweek; therefore, it would not qualify as overtime until the crew has worked in excess of forty (40) hours during the week

- M.** Overtime worked by Contractor on City's behalf after returning to City's Property (such as temporary restoration on another utility) shall be paid by City upon the approval of City's Contract Manager. Contractor shall provide signed timesheets from the temporary host utility to support the billing. Hours worked prior to responding to the requesting utility shall be included as a part the scheduled forty (40) hour workweek billable to City.

Should City release Contractor to respond to a need of another utility, Contractor shall ensure that the work site is left in a safe and useable condition. Time billed to City shall cease when crews are notified of their release and shall not commence until the site has been returned to the pre-release condition.

- N.** Any proposed rate changes to this Contract Order or the General Service Agreement must be submitted to Commerce and approved by City's Contract Manager. City's Contract Manager shall initiate a contract amendment. Amendment must be complete and properly executed prior to Contractor billing any new rates, added rates, or other change. Any changes or additions in rates or other change shall not be retroactive. No rate change shall be effective, considered, or billed prior to the issuance of the contract amendment.

- O.** Travel time and equipment from Contractor's home to Contractor's assigned work site shall not be billable to City during normal, routine work activities regardless of compensation method

Contractor shall only bill for actual time and equipment spent on productive work while on City's property. No billing for per diems shall be allowed unless contractually agreed.

- P.** At no time may Contractor's crews work more than sixteen (16) hours in any twenty-four (24) hour period for any reason without the prior written consent of City's Contract Manager. Work performed in excess of sixteen hours without proper authorization shall be deemed unauthorized and unapproved work and shall not be compensated. The sixteen (16) hour period shall include travel time.

Contractor shall not attempt to receive authorization for exceeding the sixteen (16) hour threshold retroactively.

In the event Contractor receives approval to work beyond the sixteen (16) threshold, Contractor's crews shall not report to work the following day until completing an eight (8) hour rest period.

2. Payment

- A. Payment terms are net 45 days. Payment terms may only be changed by a properly executed contract amendment initiated by City's Contract Manager.

3. Invoicing Requirements

- A. Invoices shall be submitted on a schedule agreed upon by City's Contract Manager and Contractor.

- B. All Invoices submitted under Time and Equipment Rates shall include timesheets signed by City's Project Manager or City's Contract Manager that encompasses all time and equipment billed on an invoice. Time sheets shall be designed in such a way that time spent, equipment used, and personnel used on a project may be readily identified. City's Contract Manager shall have final approval authority of all Time and Equipment billing

If overtime is billed, time sheets documenting all signed timesheets for time worked prior to billing the overtime rate shall be included with the invoice regardless of where the time was worked. These time sheets shall be legible and accurate in all respects.

- C. All supporting documentation shall be legible regardless of the method of transmission of this information to City. Any documentation submitted that is illegible shall render the associated invoice null and void until such time as Contractor re-submits said invoice and supporting documents in a legible manner and re-dated in accordance with this section. Supporting documents shall include but are not limited to:
 - 1) Any required signed timesheets
 - 2) All receipts for equipment, materials, or services
 - 3) Any approved rental agreements, lease agreements and proof of payment for the equipment or services
 - 4) Project name or number
 - 5) Required written approvals
 - 6) Additional documentation required by City policy

- D. Invoices found to contain errors or lack required supporting documentation shall be returned. Contractor shall correct any errors and resubmit the invoice in its entirety. Invoice shall be re dated to reflect the date of resubmission

- E. Invoice shall not be backdated to speed payment. Invoice dates shall not exceed seven (7) days in arrears between submission and City's receipt via method agreed upon by City's Contract Manager and Contractor

Backdated invoices shall be rejected back to Contractor for correction and resubmission

- F. City assumes no responsibility for timely payments of any invoices not received according to the requirements in this Section or invoices rejected and returned to Contractor due to any error or omission by Contractor.

- G. Upon City's Contract Manager's request, Contractor shall furnish City's Contract Manager with an ageing report listing any unpaid invoices ninety (90) days or more past

due.

H. Invoices shall be sent to :

If Invoice receiver accepts e-mailed invoices, all required documentation shall be transmitted to:

All submitted documentation shall be legible and reproducible.

APPROVED BY:

CITY OF NORTH LITTLE ROCK

By: _____

Title: General Manager

Date: _____

ACCEPTED BY:

CONTRACTOR

By: _____

Title: _____

Date: _____

ATTEST:

DIANE WHITBEY, CLERK