

**Construction Contract**  
**(Northridge Trail Crusher Fines Project)**

This Construction Contract (the "Contract") is made and entered into this day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and Sunland Asphalt and Construction, LLC, ("Contractor") (each individually a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. Scope of Work**

A Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Work set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. No change to the Scope of Work, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the Town.

B Within 10 days of the Effective Date, Contractor shall provide a payment and performance bond, in a form approved by the Town, in the amount of \$119,531.95.

C Contractor shall complete the Scope of Work within 90 days of the Town's issuance of a Notice to Proceed.

**II. Term and Termination**

This Contract shall commence on the Effective Date, and shall terminate when all the work described in the Scope of Work is completed to the Town's satisfaction (final acceptance), or upon the Town's providing Contractor with 30 days advance written notice, whichever occurs first; provided that the indemnification and warranty provisions of this Contract shall survive termination.

**III. Compensation**

Upon final acceptance by the Town of the work set forth in the Scope of Work, the Town shall pay Contractor an amount not to exceed \$119,531.95 (the "Contract Price"), subject to the requirements of C.R.S. § 38-26-107. If Contractor completes the Scope of Work for a lesser amount than the Contract Price, Contractor shall be paid the lesser amount.

#### **IV. Responsibility**

A Contractor hereby warrants that it is qualified to assume the responsibilities and perform the Scope of Work and has all requisite corporate authority and licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community.

B The Town's review, approval or acceptance of, or payment for any Work shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *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 Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

D Contractor is an independent contractor. Notwithstanding any other provision of this Contract, all personnel assigned by Contractor to perform work under the terms of this Contract shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

#### **V. Ownership**

Any materials, items, and work specified in the Scope of Work, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Work constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work.

The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

## **VI. Insurance**

A Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VII. Indemnification**

A Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission,

error, professional error, mistake, negligence or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Contract, the extent of Contractor's obligation to defend, indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

### **VIII. Keep Jobs in Colorado Act**

Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that they have resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

**IX. Warranty**

Contractor shall warrant and guarantee all materials furnished and work performed by Contractor under this Contract for a period of 2 years from the date of final acceptance by the Town. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Town, any portion of the work or materials that fails or is defective, unsound, unsatisfactory because of materials or workmanship, or that is not in conformity with the provisions of the Contract. The expiration of the warranty period shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

**X. Bonds**

Within 10 days of the date of this Contract, Contractor shall furnish a Payment and Performance Bond in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under this Contract, including the warranty. The bond shall remain in effect at least until 2 years after the date of final acceptance.

**XII. Miscellaneous**

A. *Governing Law and Venue.* This Contract shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *Integration.* This Contract and any attached exhibits constitute the entire agreement between Contractor and the Town, superseding all prior oral or written communications.

C. *Third Parties.* There are no intended third-party beneficiaries to this Contract.

D. *Notice.* Any notice under this Contract shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address included on the first page of this Contract.

E. *Severability.* If any provision of this Contract is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. *Modification.* This Contract may only be modified upon written agreement of the Parties.

G. *Assignment.* Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

H. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

I. *Rights and Remedies.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the Town shall not constitute a waiver of any of the other terms or obligation of this Contract. The rights and remedies of the Town under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

J. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

Justin Brooks, Mayor

Debbie Stamp, Town Clerk

DocuSigned by:

Don Mance

~~7650F114A935489~~

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(Seal)

Notary Public

## **Exhibit A Scope of Work**

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work:

### **Detailed Scope of Work**

- Excavate 6" 22,045 SF Of Soil/old Trail. Excavated spoils are to be hauled off and disposed of by the contractor
- Install uniform, 10 feet wide/6 inches deep crusher fines trail
- Compacted, excavated subgrade to be entirely covered with geotextile fabric secured with pins
- 3/8 inch grey crusher fines. Sample of product to be submitted for approval by Parks & Open Space Division Manager prior to being used
- Tread surface to provide adequate out sloping (Hillside - 2%/Crown 2% Flat)
- Crusher fines entirely compacted with a roller or vibratory compactor
- All tools/equipment/materials are to be stored in a designated area
- Trail edges graded to smooth transition between adjacent native vegetation
- Adjacent vegetation to be free of spoils (crusher fines, debris, contaminated soil, etc.)
- Trail corridor to be approved by Parks & Open Space Division Manager or designee
- Contractor responsible for safely securing work area from the public



Project Location





## **General Provisions**

### **Part 1. Definitions**

#### **1.01 Contract Documents:**

- A. Bid Form (Including Bid Summary);
- B. Bid Schedule;
- C. Bidder's Qualification Statement;
- D. Construction Contract;
- E. General Provisions
- F. Special Provisions;
- G. Town of Erie Standard Specifications for the Design and Construction of Public Improvements;
- H. Construction Task Catalog®;
- I. Technical Specifications (Gordian);
- J. Construction Drawings (if applicable);
- K. Certificate of Insurance Verification;
- L. Bid Bond;
- M. Notice of Award;
- N. Documentation submitted by Contractor prior to Notice of Award; and
- O. Addenda.

#### **Documents Submitted with Each Job Order:**

- A. Notice to Proceed;
- B. Payment and Performance Bond;
- C. Certificate of Final Payment; and
- D. Final Acceptance Form.

#### **1.02 Contract Amendment:**

A written order issued by the Town after execution of the Contract authorizing a revision to the Contract as a whole.

#### **1.03 Town:**

The Town of Erie, Colorado.

#### **1.04 Contract:**

The entire written agreement covering the performance of the Work described in the Contract Documents.

#### **1.05 Contract Price:**

The amount set forth in Section 4 of the Construction Contract.

#### **1.06 Contract Time:**

The time for completion of the Work as set forth in Section 3 of the Construction Contract.

**1.07 Day:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

**1.08 Final Completion:**

The date as certified by the Project Manager when all of the Work is completed and final payment may be made.

**1.09 Project Manager:**

The Town's duly authorized representative in connection with the Work.

**1.10 Subcontractor:**

Any person, firm or corporation with a direct contract with Contractor who acts for or on behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

**1.11 Substantial Completion:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Work, or when the Town may occupy or take possession of all or substantially all of the Work and put it to beneficial use for its intended purposes.

**1.12 Work:**

All the work specified, indicated, shown or contemplated in the Contract Documents, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

**Part 2. Time**

**2.01 Time of the Essence:**

All times stated in the Contract Documents are of the essence.

**2.02 Final Acceptance:**

Upon Final Completion, the Project Manager will issue final acceptance.

**2.03 Changes in the Work:**

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Job Order Price and the Job Order Completion Time. All changes shall be authorized by a written Supplemental Job Order signed by the Project Manager. The Supplemental Job Order shall include appropriate changes in the Job Order Proposal and the Job Order Completion Time. The Work shall be changed and the Job Order Price and Job Order Completion Time modified only as set forth in the written Supplemental Job Order. Any adjustment in the Job Order Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Supplemental Job Order is commenced. If a Supplemental Job Order results in an increase

in the Job Order Price, approval of the Erie Board of Trustees shall be required, and if such approval is not obtained, the Town shall have no payment obligation regardless of whether the Work pursuant to the Supplemental Job Order has been performed.

**204 Delays:**

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, unanticipated adverse weather conditions, or other unavoidable casualties beyond Contractor's control other than unanticipated adverse weather conditions, the Contract Time shall be extended for a reasonable period of time. "Weather" means precipitation, temperature, or wind, and an "adverse weather condition" means weather that on any calendar day varies from the average weather conditions for that day by more than 100% as measured by the National Oceanic and Atmospheric Administration. The term "unanticipated adverse weather conditions" means the number of days in excess of the anticipated adverse weather days per month as set forth below:

Monthly Anticipated Adverse Weather Days											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	4	4	4	6	3	4	2	3	3	2	5

*By reason of example only*, if in March there are two days when the snowfall exceeds the average snowfall for that day by 100%, those two days will have experienced an adverse weather condition. However, there will have been no unanticipated adverse weather condition in March, because there are four anticipated adverse weather days in March, which should be accounted for in the schedule. If, however, there are five days in which the snowfall exceeds the average snowfall by 100%, an unanticipated adverse weather condition will have occurred, and Contractor shall be entitled to request an extension of Job Order Completion Time.

- B. Any request for extension of the Job Order Completion Time shall be made in writing to the Project Manager not more than 7 days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work and should be contained in a Supplemental Job Order.
- C. Contractor shall not be entitled to any increase in the Job Order Price, or to damages, or to additional compensation as a consequence of any such delays.

**205 No Damages for Delay:**

In strict accordance with C.R.S. § 24-91-103.5, the Town shall not amend the Contract Price or any Price associated with an individual Job Order to provide for additional compensation for any delays in performance which are not the result of acts or omissions of the Town or persons acting on behalf of the Town.

## **Part 3. Contractor's Responsibilities**

### **3.01 Completion/Supervision of Work:**

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations. Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

### **3.02 Duty to Inspect:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

### **3.03 Furnishing of Labor and Materials:**

A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.

B. In all purchases of supplies, materials and provisions to be incorporated or otherwise used by Contractor in the Work, Contractor shall use supplies, materials and provisions produced, manufactured or grown in Colorado if such supplies, materials and provisions are not of inferior quality to those offered by competitors outside of Colorado.

C. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*

### **3.04 Employees and Safety:**

A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Work any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.

B. Contractor shall be responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.

C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the work site and adjacent property.

### **3.05 Cleanup:**

A. Contractor shall keep the work site and adjoining ways free of waste material and rubbish. Contractor shall remove all waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon completion of its Work, conduct general cleanup operations on the work site, including the cleaning of all surfaces, paved streets and walks. Contractor shall also conduct such general cleanup operations on adjacent properties disturbed by the Work.

B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

### **3.06 Payment of Royalties and License Fees:**

Contractor shall pay all royalties and license fees necessary for the Work, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

### **3.07 Taxes, Licenses and Permits:**

Contractor shall pay all taxes imposed by law in connection with the Work and shall procure all permits and licenses necessary for the prosecution of the Work. Contractor shall obtain a Town tax-exempt number for exemption from the Town's sales tax.

### **3.08 Samples and Shop Drawings:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents.

### **3.09 Compliance with Laws and Regulations:**

Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules

relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

### **3.10 Subcontractors:**

- A. Contractor shall furnish to the Project Manager at the time each Job Order Proposal is submitted, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.
- B. Contractor shall not employ a subcontractor to whose employment the Town reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.
- C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 Corrective Work:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform, within the time period approved by the Project Manager. The Town's review, approval or acceptance of, or payment for any work shall not be construed as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract.

### **3.12 Other Contracts:**

The Town reserves the right to let other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the work site necessary to perform their contracts.

### **3.13 Communication:**

Contractor shall direct all communications to the Town regarding the Work to the attention of the Project Manager.

## **Part 4. Termination**

### **4.01 Labor Disputes:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site, Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving 48 hours' written notice of its intent to do so.

### **4.02 Default:**

The Town may terminate this Contract upon 30 days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies lawfully available to the Town including without limitation an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

## **Part 5. Warranties:**

### **5.01 Warranty of Fitness of Equipment and Materials:**

Contractor represents and warrants to the Town that all equipment and materials used in the Work, and made a part of the Work, or placed permanently in the Work, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

### **5.02 General Warranty:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of 2 years from the date of final acceptance of the Work by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Work which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Payment and Performance Bond any and all amounts necessary to complete the required work. The expiration of the warranty period shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

## **Part 6. Bonds, Insurance and Indemnification**

### **6.01 Indemnification:**

- A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from



and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

B. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to defend, indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **6.02 Notice of Claim:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within 24 hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

## **6.03 Insurance:**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and

other obligations assumed by Contractor pursuant to this Contract. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Contract.

#### **6.04 Performance and Payment Bond:**

Contractor shall furnish a Payment and Performance Bond in the full amount of the Job Order Price on all Job Orders valued \$50,000.00 and above, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. This bond shall remain in effect at least until two years after the date of Final Completion.

### **Part 7. Payment**

#### **7.01 Progress Payments:**

A. The Town shall make periodic progress payments to Contractor for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit

copies of invoices from subcontractors or supplies and partial waivers executed by each.

B. Progress payments shall be in an amount equal to 95% of the Work actually completed. Completed Work shall include materials and equipment not incorporated in the Work but delivered to the work site and suitably stored.

C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

D. For all other Job Orders, the Owner may make partial, monthly payments based on the percentage of the work completed.

## **7.02 Final Payment:**

Upon final acceptance of the Work, the Town shall make final payment to Contractor pursuant to C.R.S. § 38-26-107.

## **7.03 Liquidated Damages:**

A. Because time is of the essence and delayed performance causes a compensable, yet difficult to precisely ascertain, damage to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in each Job Order Proposal, as modified through approved Supplemental Job Order(s), Contractor shall be assessed the following amounts which constitute a reasonable estimate of the actual damages such delay would cause the Town:

<b>Value of Job Order</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820

\$12,000,000 or greater      \$2,250

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Job Order Completion Time. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

#### **7.04 Oral Agreements Prohibited:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Erie Board of Trustees. The Town acknowledges that sufficient funds have been appropriated to pay the Contract Estimated Annual Value, but Contractor shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Erie Board of Trustees.

#### **7.05 Items Not Included in Bid:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically accounted for by the Contractor in their bid Adjustment Factor(s).

#### **7.06 Changes in Quantity:**

A. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.

B. All other Changes in the Work shall be addressed by section 8 of the Job Order Contract Special Conditions: Changes in the Work.

#### **7.07 Bid Price Adjustments:**

A. When a major item is increased to more than 125% or decreased below 75% of the original quantity stated in the original Job Order, the Price Proposal shall be modified by written Supplemental Job Order. Payment for major items shall be calculated by the terms of the Supplemental Job Order.

B. A "major spike" is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued. If a major spike occurs in a specific material cost, Contractor may submit a request for a price modification to a Unit Price or individual Job Order. In order to initiate such a request, Contractor shall:

1. Identify the specific material that has experienced a major spike;

2. Identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike; and

3. Demonstrate that the spike exists by submitting a minimum of three quotes on material supplier letterhead to show that the current price meets the "major spike" definition above.

C. The Town, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued times the quantity stated in the Job Order. The adjustment will not include any other markup, and the NPP adjustment factor will not apply.

D. The Town, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order.

### **7.08 Eliminated Items:**

Should any items contained in the Job Order Price Proposal be found unnecessary for completion of the Work, the items shall be eliminated. The Job Order Price shall be modified through written Supplemental Job Order, and the amount of the Supplemental Job Order shall be the eliminated quantity multiplied by the unit price stated in the Construction Task Catalog®, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

### **7.09 Materials Stored But Not Incorporated:**

Payments may be made to Contractor for materials stored on the work site but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Work and conforms with the Contract Documents. Payments shall not exceed 85% of the price shown in the Job Order or 100% of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

### **7.10 Cost Records:**

Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

## **Part 8. Miscellaneous**

### **8.01 Publications:**

Any and all publications relating to the Work and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

### **8.02 Confidentiality:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared or assembled by Contractor under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

### **8.03 Independent Contractor:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other benefits.

### **8.04 Conflicts:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Contract Modifications (later takes precedence over earlier).
2. Construction Contract.
3. Addenda.
4. Job Orders (including Detailed Scopes of Work, Job Order Proposals and any Supplemental Job Orders).
5. Job Order Contract Special Conditions.
6. Request for Bids.
7. Special Provisions.
8. General Provisions.
9. Town Technical Specifications.
10. Standards and Specifications for Design and Construction of Public Improvements. \*Most recent iteration.
11. Construction Task Catalog®.
12. Gordian Technical Specifications.
13. Supplemental Specifications.
14. Detailed Plans (Calculated dimensions will govern over scaled dimensions).

## **Special Provisions**

### **1. General.**

A. All labor, services, material, and other work necessary for the construction of this Job Order Contract shall be provided by Contractor. Contractor's responsibilities shall include, but not be limited to: managing the budget; scheduling and coordinating work meetings; conducting field tests and geotechnical studies; preparing exhibits and participating in formal and informal public meetings at locations provided by the Town; and timely processing field orders, change orders, Supplemental Job Orders and notices of substantial completion.

B. Contractor shall carefully examine all Work, and shall be solely responsible for the character, quality, and quantities of Work, materials, and compliance with the Contract Documents (Job Orders).

C. Contractor shall identify any and all necessary easements for construction and maintenance of the Work.

### **2. Other Regulations.**

A. Contractor shall ensure that the Work is in compliance with the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and other applicable codes and specifications.

B. In case of any discrepancy between any of the requirements set forth in the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and these Contract Documents, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.

### **3. Representatives.** Contractor shall have at the work site at all times as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and being thoroughly experienced in the type of work being performed. The Town shall have a representative on the job site to observe work for conformance with the Contract Documents (Job Order(s)).

### **4. Work Administration.** The Town shall administer the Work, including the finalization of all Job Orders, any Supplemental Job Orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in the Contract Documents.

### **5. Engineer.** The Engineer for this Work shall be the Town Engineer.

6. Inspections and Testing.

A. Contractor shall be responsible for performing materials testing. In addition to the materials testing performed by Contractor, the Town may conduct Quality Assurance testing at its own discretion.

B. Contractor shall coordinate its construction schedule with the testing agency and Town so that key inspection points may be observed. If Contractor fails to provide reasonably adequate notice or proceeds without the required inspection, the subject work shall be re-exposed or redone in its entirety, while the inspector is present. No extra compensation shall be awarded to Contractor for extra work due to Contractor's failure to coordinate inspections with the testing agency or the Town. All costs associated with Contractor's failure to coordinate inspections shall be borne by Contractor.

C. Contractor shall perform construction inspections. Contractor shall attend any pre-construction meeting(s) and be available to provide technical assistance during the course of construction as necessary. Contractor shall provide site visits and reviews upon request from the Town during the construction phase to ensure compliance with the intent of the plans and to resolve any potential conflicts. Contractor shall provide a written summary after each site visit.

D. Contractor shall be responsible for scheduling the final inspection with the Town.

7. Construction Schedule.

A. At the time of the Pre-construction Conference (Joint Scope Meeting), Contractor shall prepare and submit to the Town for review a construction schedule including: proposed daily construction hours; details of all construction items; start and finish dates; confirmation and dates for coordinating all utility relocation and/or interruptions; and the same information for all subcontractor(s). The schedule shall not be changed without prior notification and review by the Town. The schedule shall be in the form of a chart of suitable scale to indicate approximately the percentage of Work scheduled for completion at any time. Contractor shall enter on the chart the actual progress at the end of each 2-week interval as directed by the Town and shall deliver to the Town 3 copies thereof on a biweekly basis.

B. Contractor shall also prepare and submit a schedule of the anticipated manpower by title and duty. The manpower proposed shall be adequate for orderly flow of work and completion within the time specified in the Contract Documents.

C. All construction activities shall be coordinated with the Project Manager.



8. Saturday, Sunday, Holiday and Night Work.

A. The majority of work shall be performed during Normal Working hours as described in the Bid Schedule. Normal Working hours is work performed including the hours of 7:00 AM to 6:00 PM, Monday through Friday, except for Town holidays. If Work is identified outside of those hours and days, it will be deemed as Other than Normal Working hours, which shall include the hours of 6:00 PM to 7:00 AM, Monday through Friday and all day Saturday, Sunday and Town Holidays. Lane closures are restricted to 8:30 a.m. to 3:30 p.m. on arterial and collector streets, except for such work as may be necessary for proper care, maintenance, and protection of Work already completed, or in cases where the Work would be endangered or if hazards to life or property would result.

B. If Contractor and Town agree it is necessary to perform work on Saturdays, Sundays, holidays, or at night, Contractor shall make prior arrangements with the Town and receive written approval at least 48 hours before such time. Such approval may be revoked by the Town if Contractor fails to maintain adequate equipment and lighting at night for the proper control, and inspection of the work. If Work is performed without the Town's prior approval, and as a result the Town had not assigned inspectors to the work, the Town may declare Work performed during this period of time defective.

9. Progress Reports.

A. Progress reports and progress/manpower schedules shall be updated and submitted to the Project Manager at the end of each 2-week period, or at such other times as the Project Manager may request. Contractor shall also forward to the Project Manager, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work.

B. If the completion of any part of the Work or the delivery of materials is behind the approved schedule, Contractor shall submit a plan acceptable to the Project Manager for bringing the Work up to schedule. The Town shall have the right to withhold progress payments for the work if Contractor fails to update and submit the progress/manpower schedule and reports as specified.

10. Pre-construction Conference. See section 5.4 of the Job Order Contract Special Conditions for Joint Scope Meeting Conference requirements.

11. Fees and Permits. See section 6.6 of the Job Order Contract Special Conditions

A. Prior to commencing any Work, Contractor shall secure, all necessary fees and permits required for the performance of the Work, including an Army Corps of Engineers 404 permit, if necessary.

B. All fees for permits issued by the Town shall be waived.

12. Existing Utilities.

A. The Work shall be coordinated with all impacted utility companies, districts, associations, agencies, and residents located in the work site. Contractor shall conduct the meeting and provide summary minutes.

B. Contractor shall determine the actual location of all existing utilities prior to starting any Work. Contractor shall contact utility companies for field locations prior to the start of Construction Work and shall contact all utilities at least 48 hours prior to beginning excavation and/or grading. If the exact location and depth of existing underground utilities are unknown, Contractor shall perform all necessary exploratory excavation to locate these facilities which may affect the Work prior to beginning construction. Contractor shall obtain required locates and Contractor shall include the information on the plans. Contractor shall resolve any utility discrepancies. Contractor shall be liable for all damage done to existing utilities in the performance of the Work.

C. If Contractor requests that utility companies relocate utilities for Contractor's convenience, such relocation shall be at Contractor's expense.

D. The time of performance under the Contract shall not be extended to account for repair of utilities which are damaged by Contractor.

13. Water and Electricity. Contractor shall provide and maintain, at its own expense, an adequate supply of water and electricity required for the Work. Contractor shall install and maintain supply connections and lines satisfactory to the Project Manager, and prior to Final Completion, Contractor shall remove the supply lines at its expense.

14. Dust Control. Contractor shall use measures to prevent and control dust within the area affected by the Work. No additional compensation shall be paid to Contractor for dust control. Contractor shall clean any soil, dirt, or debris tracked onto any adjacent streets. Within 24 hours of notification by the Town that any adjacent streets require cleaning, Contractor shall clean such streets or the Town may have the streets cleaned and deduct the cost of such cleaning from the Contract Price.

15. Construction Staging Areas. All construction staging areas shall be located within the work site. The boundaries of construction staging areas shall be approved by the Town. Construction staging areas shall be used for material storage, parking for equipment, and employees' vehicles. A construction trailer shall not be required, but may be used if the location of the trailer is approved by the Town. Upon Final Completion, all staging areas shall be clean and restored to their original condition. No additional compensation shall be provided to Contractor for cleaning of construction staging areas.

16. Sanitary Facilities.

A. Sanitary convenience for the use of all persons employed on the work, properly screened from public observation, shall be provided in sufficient numbers

and in such a manner and at such points as approved by the Town. The contents shall be removed and disposed of in a satisfactory manner.

B. The sanitary conveniences specified above shall be the obligation and responsibility of Contractor. The facilities shall be made available to all other contractors, subcontractors, and inspection personnel in the work site.

C. Contractor shall supply sufficient drinking water from approved sources to all of its employees.

D. Full compensation for compliance with this Section is included in the Job Order Price, and no additional compensation shall be provided.

17. Soils Investigations and Foundation Engineering. Contractor shall be responsible for all geotechnical investigations necessary to design and perform the Work.

18. Lines and Grades. Contractor shall lay out the Work and shall be responsible for all measurements in connection therewith. Contractor shall, at its own expense, furnish all stakes, templates, platforms, equipment, and labor, including surveyors, that may be required in setting and cutting or laying out any part of the Work. Contractor shall be responsible for the proper execution of the Work to such lines and grades.

19. Traffic Control.

A. Contractor shall furnish all necessary flag persons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and perform any other work necessary for the protection of all work being performed, and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the current Manual on Uniform Traffic Control Devices.

B. At the Pre-construction Conference, Contractor shall submit a traffic control plan for review by the Town. The plan shall discuss the traffic control measures proposed for the safety of vehicular and pedestrian traffic through the work site.

C. Contractor shall at all times take proper precautions for the protection of and replacement or restoration of landscaping, driveway culverts, street intersection culverts or aprons, irrigation crossings and systems, mailboxes, driveway approaches, signs, existing utilities, and all other public and private installations that may be encountered during the Work.

D. No driveway or private alley shall be blocked without prior written permission from the resident who would be affected by such blocking, with a copy to the Town.

E. No road shall be closed at any time.

F. Contractor shall advise the Police Department, school districts, trash services, and homeowners of any lane closures, including dates and times.

G. It shall be Contractor's responsibility to: maintain, protect, and control traffic in the vicinity of and in the work site; restrict parking on streets near the work site; and provide necessary parking areas for all employees in suitable locations as approved by the Town.

20. Archaeological and Historical Discoveries.

A. Contractor shall inform the Town of any evidence which might suggest to a layperson that archaeological or historical materials may be present in the work site. Upon making such a discovery, Contractor shall do whatever is necessary to avoid disturbing the work site. This may require that Contractor's activities be redirected or stopped until the Town determines how to proceed.

B. As a result of Contractor's efforts to preserve the potential discovery at the work site, if Contractor's activities are delayed for longer than 8 normal work hours, Contractor shall prepare accounting information to support an adjustment to the Job Order Price.

21. Water Control.

A. Contractor shall take such precautions as necessary to construct the Work in a dry condition, and Contractor shall provide for drainage, dewatering, and control of all surface and subsurface water and shall erect any necessary temporary structures or other facilities at its own expense.

B. Contractor, at its own expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from the commencement of Work through Final Completion.

C. Contractor shall be responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water and ground waters.

22. Disposal Site

A. Contractor shall be responsible for the removal of all excess excavation, debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Costs of disposal are included in the Job Order Price and shall not entitle Contractor to additional compensation. Contractor shall designate in writing a disposal site located outside the Town limits and acceptable to the Town.

B. Contractor's cost for loading, hauling, daily cleaning of streets, disposal of the earthwork (excavation) materials, together with the construction, maintaining and watering of haul roads, and dump fees and permits are included in the Job Order Price and shall not entitle Contractor to additional compensation.

23. Video Prior to Construction. Contractor shall provide the Town with a video of the entire work site prior to beginning construction, including all adjacent areas, at Contractor's own expense. One copy of the video shall be provided to the Town and become the property of the Town prior to the commencement of any Work.

24. Existing Improvements and Restoration.

A. Contractor has field inspected the work site and fully understands that existing landscaping and improvements are present within the work site. Such existing improvements shall be protected. Any damage or disruption in the public right-of-way, drainage easements, Town property, or private property related to the Work shall be restored to pre-existing or better condition.

B. Contractor shall be responsible for replacing all existing improvements, including irrigation systems and landscaping, damaged during Contractor's activities, except as otherwise provided in the Contract Documents.

25. Erosion Control. Contractor shall provide an erosion/sediment control plan for use during construction. The plan shall include site specific details showing the type, location, and quantity of BMP's to be used. The erosion/sediment control plan shall be designed to prevent sediment from leaving the construction area. Special attention shall be given to prevent sediment from entering into any wetland area.

26. Vandalism. Contractor shall take all necessary steps to protect the work site from vandalism. Contractor shall be solely responsible to repair any damage caused by vandalism, including the removal of graffiti, at Contractor's own cost. The Contract Price or Job Order Price shall not be increased to reimburse Contractor for such costs.

**Job Order Contract (JOC) Special Conditions**

The following clarifications and modifications apply to the General, Supplemental and Special Conditions:

1. Whenever the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".
2. Whenever the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".
3. Whenever the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price"
4. The Job Order Price shall set forth the fixed price, lump sum amount for which Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Job Order, estimated quantities, lists of materials and bid prices shall not apply,

the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.

5. All references to "Bid Items" shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.
6. All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.
7. The Construction Task Catalog® shall govern the work included in the Unit Price of a Pre-Priced Task.

### **1. Definitions**

1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog®.
2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Base Term** - The initial period of the Contract and does not include any Option Terms.
4. **Construction Task Catalog®** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
5. **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
6. **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued to the Contractor each year.
7. **Job Order** - A written order issued by the Town, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
8. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
10. **Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated

Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.

12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
13. **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.
14. **Normal Working Hours** - Normal Working hours is work performed including the hours of 7:00 AM to 6:00 PM, Monday through Friday, except for Town holidays
15. **Notice to Proceed** - A written notice issued by the Town directing the Contractor to proceed with construction activities to complete the Job Order.
16. **Option Term** - An additional period of time beyond the Contract Time which extends the termination date of the Contract.
17. **Other than Normal Working Hours**- Include the hours of 6:00 PM to 7:00 AM, Monday through Friday and all day Saturday, Sunday and Town Holidays.
18. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
19. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
20. **Request for Proposal** - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
21. **Secured Facilities** – Any facility deemed to be “Secured” by the Town will require, at a minimum, tool inventory and a series of check in procedures. For each facility, the Town Project Manager shall determine and communicate the access and egress requirements in each request for Job Order Proposal.
22. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
23. **Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

## 2. Contractor Selection

- 2.1. Job Order Contracting: The Town may award an individual Job Order to any selected Contractor. Selection of Contractor and award of the Job Order will

be in compliance with established Town procedures and based on one or more of the following criteria:

- 2.1.1. Rotational selection among all contractors, unless otherwise determined by the Town.
- 2.1.2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
- 2.1.3. Balancing Job Order volume among Contractors.
- 2.1.4. Price, as determined by the Adjustment Factors of the Contractors.
- 2.1.5. Limitations posed by bonding capacity of the Contractors.
- 2.1.6. Other appropriate criteria as deemed in the best interest of the Town.

### **3. Contractor's Personnel**

- 3.1. Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the Town and shall have a cell phone at which they can be reached at all times.
- 3.2. Contractor shall have an office with the Town or within the County of Weld or the County of Boulder respective to the County in which the work is being completed, or if the office is located in another location, offices will be approved at the Town's discretion.
- 3.3. The Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a day, seven days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the Town of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders. Whenever, in the sole discretion of the Town, the Contractor is not providing a sufficient level of supervision, the Town may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the Town.



#### **4. Procedure for Ordering Work**

##### **4.1. Conduct the Joint Scope Meeting**

**4.2.** As the need exists, the Town will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.

**4.3.** The Contractor does not have the right to refuse to perform any Project, Pre-priced Task, or Non Pre-priced Task.

**4.4.** The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

4.4.1. The work to be performed;

4.4.2. Presence of hazardous materials;

4.4.3. Job Order specific Insurance (if any);

4.4.4. Required permits – including drawings for permits;

4.4.5. Long lead time materials;

4.4.6. Protocol for workers entering the site;

4.4.7. Staging area and areas that are off-limits;

4.4.8. Construction schedule and work hours – with critical milestones and phasing requirements;

4.4.9. Controlled inspections, testing requirements;

4.4.10. Value Engineering suggestions;

4.4.11. Organization of Price Proposal – by location, by corner, etc.;

4.4.12. Due Date for Detailed Scope of Work and for Price Proposal; and

4.4.13. The Traffic Control Plan if required

**4.5.** Upon completion of the joint scoping process, the Town will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Town will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Town, will be the basis on which the Contractor will develop its Job Order Proposal and the Town will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

**4.6.** The Town may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities

required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Town cannot agree on the quantities required, or for any other reason as determined by the Town. In all such cases, the Town shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

- 4.7.** If the Contractor requires additional information to clarify the Detailed Scope of Work before preparing the Job Order Proposal, the Contractor will make such request quickly so that the Job Order Proposal can be submitted on time.

## **5. Preparation of a Job Order Proposal**

- 5.1. The Contractor's Job Order Proposal shall include, at a minimum:
- 5.1.1. Job Order Price Proposal;
  - 5.1.2. Support documentation for Non Pre-priced Tasks;
  - 5.1.3. Required drawings or sketches;
  - 5.1.4. List of anticipated Subcontractors including a MBE/WBE Certification;
  - 5.1.5. Construction schedule; and
  - 5.1.6. Other requested documents.
- 5.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 5.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 5.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:
- 5.4.1. Pre-priced Task: The Contractor shall select the appropriate Pre-priced Tasks, enter the accurate quantities, and select the appropriate Adjustment Factor to be used for each such Pre-priced Task. The Contractor shall use the Adjustment Factors in effect on the date the Price Proposal is due, even though the Job Order may be issued after the Adjustment Factors have been updated.
  - 5.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®.
- 5.4.2.1. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's own forces:**

**A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

**B** = The hourly, weekly, or monthly rate for each piece of equipment not in the Construction Task Catalog® multiplied by the quantity;

**C** = Lowest of three independent quotes for all materials.

**Total for Non Pre-priced Tasks performed with Contractor's own forces** =  $(A+B+C) \times$  Non Pre-priced Task Adjustment Factor

**For Non Pre-priced Tasks Performed by subcontractors:**

If the Non Pre-priced Task will be subcontracted, the Contractor must submit three independent quotes for the work.

**D** = Lowest of three subcontractor quotes. If three quotes are not attainable in certain situations, Contractor may submit less than three with a letter of justification explaining the circumstances.

**Total for Non Pre-priced Tasks performed by subcontractors** =  $D \times$  Non Pre-priced Task Adjustment Factor

5.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:

5431. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

5432. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Town may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in

writing for the Town's approval. If approved, less than three quotes or bids will be allowed.

5433. After a Non Pre-priced Task has been approved by the Town, the Unit Price for such task will be established, following approval by the Town, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

5434. The Town's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

- 5.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Town may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
- 5.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
- 5.7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- 5.8. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 5.9. In immediate response situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for

Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

- 5.10. For purposes of Using the Construction Task Catalog®, the project site is defined as the exterior perimeter of a building. For work not performed in a building, the project site is defined as the limits of the work area.
- 5.11. By submitting a Job Order Proposal to the Town, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Town.
- 5.12. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 5.13. In the event the Contractor is required to work in a secured facility or location where labor, materials, and equipment must be inspected, the Contractor will be permitted to add labor hours to the Job Order Price Proposal to account for lost time as a result of such inspection.

## **6. Review of the Job Order Proposal and Issuance of the Job Order**

- 6.1. The Town will evaluate the entire Job Order Price Proposal and compare these with the Town's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. All incomplete Job Order Proposals will be rejected. The Town will review the Price Proposal to determine the accuracy of the Pre-priced Tasks, quantities, Adjustment Factors, and Non Pre-priced Tasks.
- 6.2. The Contractor may choose the means and methods of construction; subject however, to the Town's right to reject any means and methods proposed by the Contractor that:
  - 6.2.1. Will constitute or create a hazard to the work, or to persons or property;
  - 6.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
  - 6.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 6.3. The Town reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Town also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Town. The Town may perform such work by other means. The Contractor shall not recover any

costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Town.

- 6.4. By submitting a Job Order Proposal to the Town, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Town.
- 6.5. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non-Pre-priced Tasks, accurate quantities, and correct Adjustment Factors in the Price Proposal prior to delivering it to the Town.
- 6.6. If the Job Order Proposal is found to be complete and accurate, the Town may issue a Job Order to the Contractor.
- 6.7. The Job Order signed by the Town and delivered to the Contractor constitutes the Town's acceptance of the Contractor's Job Order Proposal.
- 6.8. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Job Order Price shall be the value of the approved Price Proposal.
- 6.9. All clauses of this Contract shall apply to each Job Order.
- 6.10. The Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 6.11. The Town, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with these procedures for ordering work.
- 6.12. The Town may decide not to issue a Job Order under development, may decide to cancel a Job Order or any portion of a Job Order, or cancel a Project or any portion of a Project, for any reason. In such case, the Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to attending the Joint Scope Meeting, preparing or reviewing the Detailed Scope of Work, preparing a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, or reviewing the Job Order Proposal with The Town. The Town may perform such work by other means.
- 6.13. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. A separate Job Order will

be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work,

6.14. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Town and delivered to the Contractor constitutes the Town's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.

6.15. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Town. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures. Contractor must submit to the Town's Representative, their emergency procedure/safety plan prior to starting work. Contractor must be responsible for quality assurance and quality control.

## **7. Changes in the Work**

7.1. The Town, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.

7.2. All Supplemental Job Orders shall be developed and priced in accordance with the Procedures for Developing All Job Orders

7.3. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

## **8. Contract Modifications**

8.1. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Contract Amendment.

## **9. Payments**

9.1. The Town will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Town may make partial, monthly payments based on a percentage of the work completed.

9.2. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the

percentage complete of the detailed Scope of work and the dollar value for which the Application for Payment may be submitted.

## **10. Job Order Contracting Software**

### **10.1. Job Order Contracting Software**

10.1.1. The Town selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for their JOC program. The Gordian JOC Solution includes Gordian's proprietary JOC System Software and JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the Town. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Town is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution. This Gordian JOC Solution is expressly excepted from Section V of the Construction Contract.

## **11. ENR CCI Adjustment of the Adjustment Factors**

11.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the effective date of the Contract to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to such anniversary, that the Adjustment Factors be updated. The request shall be delivered to the Town and to Gordian. In the event the Contractor fails to deliver the request timely, then the Town shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the Town. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

11.2. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities, published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. February bid due date, Base Year Index is February of the prior year to January of the bid due date year).

11.3. A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months beginning with the



month of anniversary of the bid due date (e.g. February bid due date, Current Year Index is February of the prior year to January of the current year).

- 11.4. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 11.5. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
- 11.6. Averages shall be obtained by summing the 12-month indices and dividing by 12.
- 11.7. All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
- 11.8. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
- 11.9. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 11.10. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 11.11. If the Contractor submits a Price Proposal with outdated Adjustment Factors, then the Contractor waives its right to resubmit the Price Proposal using updated Adjustment Factors.
- 11.12. The Contractor cannot delay submitting a Job Order Proposal to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 11.13. The Non Pre-priced Adjustment Factor shall remain fixed for the duration of the Contract.

## **12. As-Built Drawings**

- 12.1. If the Contractor is provided, or prepares, drawings as part of the Detailed Scope of Work, then as the Detailed Scope of Work progresses the Contractor shall keep a complete and accurate record of changes to, and deviations from, such drawings. The As-Built Drawings will be created in the same medium (paper, electronic) in which they were originally prepared.