

## EMERGENCY AND ON CALL REPAIR & MAINTENANCE CONTRACT

**THIS EMERGENCY AND ON CALL REPAIR & MAINTENANCE CONTRACT** (“Agreement”) is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **NETWORK INFRASTRUCTURE CONSTRUCTION COMPANY**, a Colorado Corporation, whose address is 12835 US Highway 285, Conifer, Colorado 80433 (the “Contractor”).

### RECITALS

**WHEREAS**, the City has identified a need for a qualified contractor to perform, as assigned, routine and emergency services as directed by the City on an “on-call” or “as needed” basis (the “Program”). Program work will generally consist of performance of such routine and emergency repair and maintenance services required on a variety of as yet to be identified projects as assigned by the City (the “Projects”).

**WHEREAS**, the work shall consist of the routine and emergency repair, maintenance, and replacement services at multiple locations throughout the City and County of Denver.

**WHEREAS**, Standard Work hours are considered Monday through Friday 7:00 A.M to 5:00 P.M. Non-standard work hours are 5:00 P.M. to 7:00 A.M. Monday through Friday, Weekends, and City of Denver Holidays, described in **Exhibit A** (the “Scope of Work”), and as further defined in each specific Work Order assigned hereunder (the “Work Order”).

The Contractor is willing, able and has the present capacity to perform all of the repair services required by this Agreement.

### AGREEMENT

The recitals set forth above are incorporated herein as set forth in their entirety. In consideration of the mutual covenants contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

#### **1. WORK TO BE PERFORMED.**

**A. Work.** The Contractor shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all of the work described in the Scope of Work, **Exhibit A** (the “Work”). Contractor shall perform Work in a

highly skilled manner consistent with the performance standards and technical requirements set forth in **Exhibit A**. When called for emergency services, the Contractor will first determine the number of workers and the type of equipment, and supplies required and respond to the site within two (2) hours. The Contractor will commence work as soon as practical, and no later than the next business day, and will provide a “not-to-exceed” cost estimate to the using agency. The Contractor shall complete the Project within the time period specified in the Work Order for the Project. When called for routine services, the Contractor shall commence the Work within five (5) days following the issuance by the City of a Work Order for a Project unless a different period is specified in the Work Order. The Contractor shall complete the Project within the time period specified in the Work Order for the Project. The Contractor shall diligently prosecute the Work to completion using its best efforts, highly skilled work effort and attention. The Contractor shall be solely responsible for all means, methods and techniques of performance, protection of property and safety. The Contractor shall be responsible to the City for the acts and omissions of the Contractor’s employees and any other persons performing any of the work or furnishing materials.

**B. Oversight.** The Contractor shall conduct the Work under the general direction of and in coordination with the Executive Director of the Department of General Services or other designated representative (the “Director”) and the Department employee(s) assigned to manage the Work Project (the “Department”) and make every reasonable effort to fully coordinate the Work Project with any City agency or any person or firm under contract with the City doing work which affects the Contractor’s Work Project. The Contractor agrees to allow the City to review any of the procedures used by it in doing the Work under this Agreement and to make available for inspection all notes and other documents used in performing the Work.

**C. Cooperation and Coordination.** The Contractor shall make every reasonable effort to fully coordinate the Work with any City agency or any person or firm under contract with the City doing work which affects the Contractor’s Work on any particular Work Order. The Contractor agrees to allow the City to review any of the procedures used by it in doing the Work under Agreement and to make available for inspection all notes and other documents used in performing the Work.

**D. Non-exclusivity.** The Contractor acknowledges and agrees that Agreement does not create an exclusive right to perform all Work for which the City may contract for the type of service described in **Exhibit A**. The City may enter into contracts with other contractors to perform the same or similar services and reserves the right to select, at the discretion of the Director, the contractor that is the most cost effective, best suited, and/or most readily able to perform a specific Work Project.

**E. Work Order.** As the Department determines the need for emergency services, the City will issue a temporary authorization code followed by a written Work Order to the Contractor. As the Department determines the need for routine services, the City will issue a written Work Order to the Contractor. The Work Order will detail the nature and extent of services to be provided, the location of the Work Project, and the timeframes within the Work Project is to be performed, with a projected amount to be paid to the Contractor (the “Work Project Amount”) based on the Work items described in the Statement of Work and Technical Specifications in **Exhibit A**. **Exhibit B** attached to this Agreement and incorporated herein by reference substantially reflects the form of the Work Order to be issued by the City. The Contractor shall, within two (2) hours for an emergency and (48) hours for routine service, and in good faith, confirm the scope of services detailed therein and the associated Work Project Amount, all of which must be in accordance with the terms and conditions of this Agreement, and respond back in writing to the Department as to the Contractor’s ability to initiate and complete the Work Project in the timeframes specified in the Work Order. The Contractor assumes all responsibility and risks, including any additional work or additional costs, for failure to confirm the completeness and accuracy of the Work Order and the Work Project Amount, including any inquiries with the Department as to any directions or specification in the Work Order which are not clear. Confirmation includes, but is not restricted to, inspections of the Work Project site and inquiries with the Department as to any directions or specifications in the Work Order which are not clear. Upon the Contractor executing the Work Order, the Department shall finalize and execute the Work Order for the Work Project and return a copy of the executed Work Order to the Contractor which shall include a purchase order number and the temporary authorization code for each Work Project.

**F. Work Order Change.** If, after execution of a Work Order and commencement on the Work Project, additions, deletions or modifications to the Work described in the Work Order, along with any associated changes in the Work Project Amount, are required by the Department or are requested by the Contractor and approved in advance by the Department, an Work Order Change, in substantially the form as set forth in **Exhibit C** attached to this Agreement and incorporated herein by reference, may be issued in accordance to the same standards and procedures prescribed for Work Orders. The Contractor shall promptly and thoroughly review and respond to the proposed changes, in accordance to the same standards and procedures prescribed for Work Orders and notify the Department that the Contractor is ready and willing to perform the Work Project in the manner and timeframes as modified by the Work Order Change. The Department will not execute the Work Order Change unless any material changes proposed by the Contractor to the terms of the issued Work Order and/or additions to the Work Project Amount are deemed acceptable by the Director and incorporated into the Work Order Change and until funding adequate to cover the entire Work Project Amount, if modified, is available.

**G. Inspection of the Work.** Persons who are employees of the City or who are under contract to the City will be assigned to inspect and test the Work. These persons may perform any tests and observe the Work to determine whether or not materials used, manufacturing and construction processes and methods applied, and equipment installed satisfy the requirements of the technical specifications, all other Contract requirements, and the Contractor's warranties and guarantees. The Contractor shall permit these inspectors unlimited access to the Work and provide means of safe access to the Work, which cost shall be included in the Contractor's price for the Work. In addition, the Contractor shall provide whatever access and means of access are needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the Work and shall respond to any other reasonable request to further the inspector's ability to observe or complete any tests. Such inspections shall not relieve the Contractor of any of its quality control responsibilities or any other obligations under the Contract. All inspections and all tests conducted by the City are for the convenience and benefit of the City. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and the City may reject or accept any Work or materials at any time prior to

the inspections, whether or not previous inspections or tests were conducted by the inspector or a City representative.

**H. Warranties; Correction of Work.** The Contractor warrants that all parts, materials, components, equipment, systems and other items incorporated into the Work (“Items”) shall be new, unless otherwise specified, and suitable for the purpose used, and will be of good quality, free from faults and defects, and in keeping with common industry standards and that said Items shall be properly installed or incorporated into the Work in accordance with manufacturer’s specifications and standard practices for said Items, and all of this shall be in conformance with the specifications and requirements of this Agreement. The Contractor’s warranty shall be effective for a one-year period following the completion of the Work and shall be extended for one year following any repair, replacement or corrective action required under the warranty. The Contractor, when requested, shall furnish the Director with satisfactory evidence of the kind and quality of Items proposed to be incorporated into the Work. At any time while this Agreement is in effect or during the warranty period, the Contractor shall, at no cost to the City, promptly investigate, repair, replace, or otherwise correct any of its workmanship and/or Items in the Work which contain fault(s) or defect(s), whether such failure(s) are observed by the City or the Contractor, and promptly repair, replace, otherwise correct any damage to any personal or real property owned by the City or another person resulting from said fault(s) or defect(s) or from the repair, replacement, or correction of the fault(s) or defect(s).

**I. Title.** The Contractor warrants that it has full title to all items incorporated into the Work, that its transfer of such title to the City is rightful and free and clear from all security interests, liens, claims, or encumbrances whatsoever, and that the Contractor will defend such title against all persons claiming the whole or part of any Item, at no cost to the City.

**J. Completion; Deficiency.** The Contractor shall promptly notify the Project Manager as to the completion of the Work so that inspection of the Work may be made by the City. If a Completion Notice is specified in the Work Order, the Contractor shall not submit a request for payment for the Work performed until a Completion Notice is issued by the Director or ten (10) calendar days after the City is notified of Work completion, whichever is sooner. If the Work performed is determined by the Director to be defective, deficient or incomplete, whether or not a Completion Notice is required, the Contractor shall correct or complete the Work, at

no additional cost to the City, within the timeframe specified in a Notice of Deficiency issued by the Director, and promptly notify the Director upon correction or completion of the Work.

**K. Time is of the Essence.** The Work is time sensitive. The Contractor acknowledges and affirms that it is imperative that the Contractor exercise due diligence and actively and expeditiously undertake all measures necessary: 1) in initiating, making good progress, and completing the Work Project, all within the timeframes specified in Agreement and applicable Work Order, and 2) in promptly and fully correcting or completing any Work noted in a Notice of Deficiency. Failure or refusal by the Contractor to initiate, make good progress, or complete the Work within the Performance Period may result, at the discretion of the Director, in termination of this Agreement, or in assessment of liquidated damages under Section 5 of Agreement.

**L. Subcontracting.** Except as approved by the Director in advance and in writing, or in emergency situations, through a Field Order Directive Exhibit F, the Contractor shall not subcontract with another contractor to perform the Work. The Contractor is prohibited from hiring any subcontractor currently debarred by the City in accordance with section 20-77 of the Denver Revised Municipal Code.

## **2. METHODS OF WORK.**

**A. Resources, Personnel, and Time Commitment.** The Work shall be promptly commenced and actively prosecuted with the optimum complement of workers and equipment in order to complete the Work in an effective and expeditious manner. The Contractor shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to perform and complete the Work. The Work shall be undertaken by workers skilled, proficient, and experienced in the trades required by this Agreement and shall be performed in an orderly and responsible manner in accordance with recognized standards and the plans and specifications contained in this Agreement or provided to the Contractor by the City. If the City reasonably believes that the Work is not proceeding satisfactorily or timely because the Contractor has not utilized an adequate number of qualified and skilled personnel or workers or provided sufficient tools, supplies, equipment, or materials, then the City may require the Contractor, at no additional cost to the City, to utilize additional qualified and skilled personnel or workers or

provide additional tools, supplies, equipment, or materials to perform the Work in a manner reasonably acceptable to the City.

**B. Permits and Licenses.** Any tasks specified under this Agreement that require the employment of licensed or registered personnel shall be performed by licensed or registered personnel. The Contractor shall obtain, at its own expense, and maintain all permits or licenses, including any prescribed governmental authorizations or approvals, required for the performance of the Work and shall demonstrate, if requested, what actions the Contractor has taken to comply with the required permits, licenses, authorizations or approvals.

**C. Work Site Conditions.** Work sites and nearby locations shall be kept clean and neat. Equipment, vehicles, and materials no longer needed at the site shall be promptly removed from the site, and any such items lawfully stored for use on the site shall be so placed and secured as to protect the public health and safety. All scraps, debris, trash, excess soil, and other waste materials shall be regularly removed and properly disposed of. Disposal in solid waste containers provided by the City is prohibited unless written authorization is obtained.

**D. Protection of Property.** The Contractor shall assume full responsibility and expense for the protection of all public and private property, including but not limited to structures, street improvements, pathways, irrigation systems, landscaping, water lines, sewers, and other utilities, both above and below ground, at or near the site or sites of the Work or at any other location affected by the prosecution of the Work or the transportation or utilization of workers, equipment, or materials in connection with the Work. The Contractor shall provide, in a timely manner and in advance, written notice to: 1) the City department having charge of any property, right of way, or utility affected by the Work; 2) any utility having charge of any utility affected by the Work; and 3) any private property owner whose property or improvements will be affected by the Work, and shall make all necessary arrangements with such City department, utility, or private property owner for the removal and replacement or the protection of such property. The Contractor shall arrange and obtain any utility locations required by law or necessary to protect utilities or underground facilities on public or private property and shall be liable for any failure to obtain or comply with such utility locations. To the extent that any permit or license is required by a City department or other governmental entity for any work on public property, said permit or license shall be obtained and paid for by the Contractor in advance of performing the

Work and shall be complied with in the performance of the Work. If the Contractor or its employees, agents, or subcontractors destroy or damage any property, public or private, the Contractor shall promptly repair or replace such property, to the reasonable satisfaction of the Department, before the City will accept or pay for the Work performed. If the Contractor fails to make such repairs or replacement, the Director may, at the Director's discretion, undertake such repair or replacement and deduct the cost of the same from amounts payable to the Contractor under this Agreement.

**E. Safety.** The Contractor is responsible for the health and safety of every person on or at the Work site and shall take all necessary and appropriate precautions and actions to protect such persons from injury, death or loss. The Contractor shall be responsible for being fully familiar with and complying with all applicable City, state or federal laws, ordinances, rules and regulations, requirements and guidelines, including the Occupational Safety and Health Act and any regulations or directives adopted thereunder ("Safety Laws"). The Contractor shall promptly notify the City in writing of any violations of said Safety Laws, along with copies of any injury reports, and any citations, orders, or warnings issued by governmental agencies in the enforcement of said Safety Laws. The Contractor shall provide and properly locate all necessary protective devices and safety precautions, including warning signs, barricades, or other devices or precautions as required by Safety Laws or the City. For all operations requiring the placement and movement of equipment or materials, the Contractor shall observe and exercise, and shall direct its employees or agents to observe and exercise, all appropriate and prudent caution so as to avoid injury to persons or damage to property and to minimize annoyance to or undue interference with the movement of the public and the performance of City functions. All ladders, scaffolding, or other devices used to reach objects not otherwise accessible, shall be of sound construction, firm and stable and shall be maintained in good, operable condition. All such equipment shall be moved, placed, shifted, and removed from work areas in such a manner as to provide maximum safety to persons and property and cause the least possible interference with the normal usage of such areas by the public and City personnel.

**F. Disposal of Non-Hazardous Waste at DADS.** In accordance with the Landfill Agreement made between the City and Waste Management of Colorado, Inc., the Contractor will be required to haul dedicated loads (non-hazardous entire loads of waste) to



the Denver-Arapahoe Disposal Site (“DADS”) for disposal. DADS is located at Highway 30 and Hampden Avenue in Arapahoe County, Colorado. The City will pay all fees associated with such disposal but the Contractor shall be responsible for the costs of transporting the loads. Non-hazardous waste is defined as those substances and materials not defined or classified as hazardous by the Colorado Hazardous Waste Commission pursuant to C.R.S. §25-15-207, as amended from time to time, and includes construction debris, soil and asbestos. Proposals shall not use Gun Club Road between I-70 and Mississippi Avenue as a means of access to DADS.

**G. Prohibition on Use of CCA-Treated Wood Products.** The use of any wood products pressure-treated with chromated copper arsenate (CCA) is prohibited. Examples of CCA-treated wood products include wood used in play structures, decks, picnic tables, landscaping timbers, fencing, patios, walkways and boardwalks.

**H. Waiver of Part 8 of Article 20 of Title 13, Colorado Revised Statutes.** The Contractor specifically waives all the provisions of Part 8 of Article 20 of Title 13, Colorado Revised Statutes regarding defects in the Work under Agreement.

**I. Liens and Other Encumbrances.** The Contractor shall not permit any mechanic’s or materialman’s liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any worker labor performed or materials or equipment furnished by any person or legal entity to or on behalf of the Contractor, either pursuant to C.R.S. § 38-26-107 or by any other authority. The Contractor shall promptly pay when due all bills, debts and obligations incurred in connection with this Agreement and shall not permit the same to become delinquent. The Contractor shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement. The Contractor will indemnify and save harmless the City for the extent of any and all payments, interests, and penalties resulting from failure to comply with this section. The Contractor’s obligations set out in this section shall survive the termination of this Agreement.

**J. Environmental Compliance.** The Contractor shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the Work. The Contractor shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes,

laws, and orders (collectively, “Environmental Requirements”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “Hazardous Materials” shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

**K. Attorney’s Fees.** Colorado Revised Statute 38-26-107 requires that in the event any person or company files a verified statement of amounts due and unpaid in connection with a claim for labor and materials supplied on this project the City shall withhold from payments to the Contractor sufficient funds to insure the payment of any such claims. Should the City and County of Denver be made a party to any lawsuit to enforce such unpaid claims or any lawsuit arising out of or relating to such withheld funds, the Contractor agrees to pay to the City its costs and reasonable attorney’s fee which cost shall be included as a Cost of the Work. Because the City Attorney Staff does not bill the City for legal services on an hourly basis, the Contractor agrees a reasonable fee shall be computed at the rate of two hundred dollars per hour of City Attorney time.

**L. Environmental Sustainability.** The Contractor shall demonstrate commitment to and experience in environmental sustainability and public health protection practices applicable to its line of services including, but not limited to, construction waste recycling and energy efficiency. Contractor shall work to reduce landfill waste by recycling and/or salvaging recyclable materials. Where applicable, contractor shall procure and install fixtures and equipment that reduce energy use.

**3. TERM.** The term of this Agreement will commence upon the “Effective Date” of this Agreement and shall be in effect for a period of one (1) year (the “Term”). The effective date shall commence upon the date set out on the signature page below. The term of the agreement may

be extended on the same terms and conditions, for two (2) one (1) year renewal terms, upon written amendment to this Agreement prior to the expiration of the current term. The Contractor agrees to comply with all applicable Contract close-out procedures and requirements set forth in the Contract and as otherwise directed by the Director.

**4. COMPENSATION AND PAYMENT.**

**A. Maximum Contract Amount.** Each Project will be assigned and authorized separately by Work Order and the maximum liability of the City for any one Work Order shall not exceed the sum of **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)**, including all authorized Work Order changes, without the prior written approval of the Director or their designee. The Maximum Contract Amount to be paid by the City to the Contractor for satisfactory completion of all Work Orders authorized by the City and performed by the Contractor under this Agreement shall in no event exceed the sum of **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)**, unless Agreement is modified to increase said amount by a duly authorized and written amendment to Agreement executed by the Parties in the same manner as Agreement. The Maximum Contract Amount stated herein is not intended, and shall not be construed, as a promise or guarantee to the Contractor that the final price payable to the Contractor for all of the authorized Work will equal the Maximum Contract Amount.

**B. Conditions of Payment.** Payment shall be made upon satisfactory completion of the Work in accordance with the Work Order issued and this Agreement. A properly issued and signed final receipt and lien waiver shall be a condition precedent to any obligation for the City to make final payment for Work performed by the Contractor. The request for payment submitted by the Contractor must fully document and itemize the Work rendered and all equipment, supplies, materials, labor, and other authorized and actually incurred costs. The request for payment shall affirmatively represent that: i) all of the Work specified in the Work Order has been fully performed and completed and any Deficiency Notice has been satisfied; ii) no claims, liens, or amounts owed to employees, suppliers, or materialmen are outstanding and all requirements and conditions of section 13 below have been fully complied with; iii) all rights, title and interests to the materials or improvements provided or installed as the result of the Work have transferred to the City; and iv) no interest or encumbrance of any kind associated with the Work will be asserted, has been acquired, or will be made by the

Contractor or any other person or entity. If the request for payment does not contain these representations, the representations are hereby deemed to contain them. The request for payment must be approved by the Director in writing in order to be eligible for compensation under this Agreement. Any payment may be reduced by any liquidated damages assessed by the Director under sub-section 5.D.2 below.

**C. Subject to Appropriation; No Multiple Year Obligation.** It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of this Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**D. Amendments.** The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement, and that any work performed by Contractor beyond that specifically described or allowed under Agreement or without a fully and properly executed amendment to this Agreement is performed at Contractor's risk and without authorization under this Agreement.

**E. Payment of City Minimum Wage.** Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing Sections shall result in the penalties and other remedies authorized therein.

**5. TERMINATION & REMEDIES.**

**A. Termination for Convenience of the City.** The Director, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the Director.

To the extent that the Contractor has initiated or completed Work for which the Contractor has not yet been compensated in accordance with this Agreement, appropriate compensation for all such authorized Work shall be paid to the Contractor in accordance with this Agreement.

**B. Termination, With Cause, by the City.** The occurrence of any one or more of the following shall constitute a breach of Agreement (“Breach”), for which the Director may, at the Director’s option, either terminate this Agreement or withdraw a Work Order, with cause, upon written notice to the Contractor:

1) The Contractor fails or refuses, within three (3) calendar days of being notified, to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including the due diligence obligations set forth in section 1 of this Agreement or the Work methods under section 2 of this Agreement, provided that the failure or refusal to undertake, make good progress, or complete the Work is not due to matters beyond the Contractor’s control such as weather disaster or persistent bad weather, floods, or other acts of God, civil unrest, acts of the public enemy, national calamity, or strike at a manufacturer or supplier for the Work Project;

2) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Work required due to matters within the Contractor’s control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving Contractor’s employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Contractor or Contractor’s employees;

3) The Contractor has persistently or flagrantly failed to perform the Work or failed to timely perform the Work or to comply with the specifications and requirements as set forth in the Statement of Work in **Exhibit A** to this Agreement;

4) The Contractor has submitted one or more requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;

5) The Contractor has made an assignment or transfer of, or subcontracted, its responsibilities and obligations under this Agreement without obtaining the Director’s written consent or not in conformance with this Agreement;

6) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by Agreement or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and the Contractor fails to remedy the situation to the satisfaction of the Director;

7) The Contractor fails to obtain or properly and timely maintain any financial assurances required by this Agreement;

8) Any lien is filed against City property because of any act or omission of the Contractor and is not timely discharged, unless the Contractor furnishes to the City such bond or other financial assurance reasonably acceptable to the Director to protect the interests of the City;

9) The Contractor has failed to obtain or maintain any required permit or license or has utilized personnel or workers not licensed or registered as required by law;

10) The Contractor has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;

11) The Contractor fails, within three (3) calendar days of being notified, to comply with, or fails to compel its subcontractors to comply with, the prevailing wage requirements or other City ordinances applicable to the type and nature of Work being performed under this Agreement; or

12) The Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal contract in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business.

**C. Compensation.** Upon termination of this Agreement by the City, with cause, under sub-section 5.B above, the Contractor shall be compensated for the Work that the Director determines to have been satisfactorily completed, except that the City shall be entitled to keep any unpaid amount owing to the Contractor to the extent that said amount or some portion of said amount is needed to compensate the City for: 1) liquidated damages, if specified under sub-section 5.E below; 2) the costs of releasing any liens or satisfying any claims related to the

Contractor's Work; and 3) the costs of paying a new contractor for those services necessary to complete or rectify the Contractor's Work or to repair or replace any damaged or lost property caused by the Breach of Agreement. The Contractor shall have no claim of any kind whatsoever against the City for any termination with cause, except for compensation for the Work satisfactorily performed as described herein.

**D. Remedies.**

**1) *Termination.*** For any termination with cause of this Agreement, the City shall have the right to any or all of the following remedies through the courts or other means of legal recourse available to the City: a) cancellation of the Contract; b) actual damages or costs caused by Breach of the Contractor; and c) recovery of costs incurred by the City itself in paying for the release of liens related to the Contractor's Work or in completing or rectifying the Contractor's Work or in retaining and compensating another contractor to complete or rectify the Contractor's Work, to the extent not covered in sub-section 5.C. above. In any legal action brought by the Contractor, the Contractor shall not be entitled to recover any more than the full amount, not previously paid, of any Work Orders executed with and performed in whole or part by the Contractor. The City and the Contractor understand and agree that the rights of specific performance and to incidental, consequential, or punitive damages have been hereby expressly waived and released by both Parties.

**2) *Liquidated Damages.*** If the Director determines, for a Breach of Agreement under sub-section 5.B above, not to terminate this Agreement but to apply liquidated damages as provided in this paragraph, the Contractor shall be liable to the City for liquidated damages in the amount of one hundred dollars (\$100.00) per day, calculated from the day that the Director issues notice to the Contractor of a Breach under sub-section 5.B through a) the day before the Breach is remedied, or the day before a new Work Order or Agreement is executed with another contractor to perform the Work, as so determined by the Director. The Contractor and City hereby acknowledges and agrees that it would be impractical and extremely difficult to estimate the damages which the City might incur for said breach, and that, in the interest of assuring that the Work is timely and properly performed, the liquidated damages provided herein is the most fair and reasonable way to compensate the City for any delay or inadequate performance without termination of this Agreement or litigation.

6. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

7. **INDEPENDENT CONTRACTOR.** The Contractor is an independent contractor retained to perform services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. The Contractor is responsible for the operational management, errors and omissions of the Contractor's employees, agents, and subcontractors. Without limiting the foregoing, the Contractor understands and acknowledges that the Contractor and the Contractor's employees, agents and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

8. **INSURANCE.**

A. **General Conditions.** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums



for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**C. Additional Insureds:** For Commercial General Liability, Auto Liability Professional Liability, and Excess Liability/Umbrella (if required) Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include

all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**G. Commercial General Liability.** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate

**H. Business Automobile Liability.** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**I. Technology Errors & Omissions.** Contractor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

**J. Additional Provisions.**

1) For Commercial General Liability, the policy must provide the following:

- a) That this Agreement is an Insured Contract under the policy;
- b) Defense costs are outside the limits of liability;

c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

2) For claims-made coverage:

a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

b) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**9. DEFENSE AND INDEMNIFICATION.**

**A.** Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

**C.** Contractor shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and

investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**10. COLORADO GOVERNMENTAL IMMUNITY ACT.** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101 *et seq.*, C.R.S.

**11. TAXES, CHARGES AND PENALTIES.** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**12. COMPLIANCE WITH ALL LAWS.** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**13. EXAMINATION OF RECORDS AND AUDITS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours

and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

**14. ASSIGNMENT; SUBCONTRACTING.** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

**15. NO THIRD PARTY BENEFICIARY.** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**16. NO AUTHORITY TO BIND CITY TO CONTRACTS.** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**17. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral

representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**18. SEVERABILITY.** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

**19. CONFLICT OF INTEREST.**

**A.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**B.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**20. NOTICES.** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

By Contractor to: Executive Director of General Services  
201 West Colfax Avenue, Dept. 1110  
Denver, Colorado 80202

And by the City to: Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**21. DISPUTES.** All disputes between the City and Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

**22. GOVERNING LAW; VENUE.** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

**23. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

**24. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.** The Contractor shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

**25. PREVAILING WAGES.**

A. Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20- 76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered. A copy of the applicable prevailing wage rate schedule is attached as **Exhibit E** and incorporated herein by reference.

B. Date bid or request for qualifications/proposals was advertised:

C. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the actual date of proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

D. Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

E. Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

F. Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

G. If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

**26. LEGAL AUTHORITY.** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to



execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor the person signing the Agreement to enter into the Agreement.

**27. NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT.**

**A.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

**B.** The Contractor certifies that:

**1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

**2)** It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**3)** It will not enter into a contract with subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

**4)** It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way example, all program requirements related to employee notification and preservation of employee rights.

**5)** If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (30) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or

subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

C. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

28. **NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

29. **CONTRACT DOCUMENTS; ORDER OF PRECEDENCE.** Agreement consists of sections 1 through 35 which precede the signature page(s) (“Contract Text”), and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

- Exhibit A Statement of Work and General Conditions
- Exhibit B Work Order Form
- Exhibit C Work Order Change Form
- Exhibit D Insurance Certificate
- Exhibit E Prevailing Wage Rate Schedules

In the event of an irreconcilable conflict (i) between a provision of the Contract Text and any of the listed exhibits or attachments or (ii) among provisions of any exhibits or attachments, such that it is impossible to give reasonable effect to all, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Contract Text, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F

**30. SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**31. TIME IS OF THE ESSENCE.** The Parties agree that in the performance of the terms, conditions, and requirements of Agreement, time is of the essence.

**32. SECTION HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

**33. CITY EXECUTION OF CONTRACT.** Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**34. CITY EXECUTION OF AGREEMENT.** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**36. INUREMENT.** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**37. MWBE/SBE PARTICIPATION.** This Agreement is subject to all applicable provisions of Article V, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as §§ 28-117 – 137 and 28-152 – 28-158, D.R.M.C., (the “MWBE/SBE Purchasing Ordinance”) and any Rules or Regulations promulgated pursuant thereto. The City encourages, but does not require, participation by certified SBEs or MWBEs for this specific Agreement. However, the City encourages the use of qualified certified or uncertified small businesses that are owned and controlled by economically or socially disadvantaged individuals. Voluntary disclosure of participation by or independent partnerships with certified SBEs or MWBE firms is encouraged, however, selection is not required. In addition, the Contractor is encouraged to participate and engage in the City’s Mentor/Protégé program with certified firms.

**38. FIELD ORDER DIRECTIVE.**

**A.** Field Order Directive is a written order, (**Exhibit F**) signed by the Director or his designated representative, which directs the contractor to commence emergency work and to utilize the requested subcontractor prior to a formal Subcontractor Request authorization. A Field Order Directive may be used when:

1) The City determines that the Contractor must proceed immediately to perform the Work in order to avoid or correct a situation where the health or safety of persons may be affected, and sufficient time is not available to negotiate the Work;

2) The City and Contractor have not yet completed their negotiation of Work but in the interest of safety, the City requires the Contractor to proceed without an executed Order or authorization in place.

**B.** Contractor’s Duties: Upon receipt of a Field Order Directive the Contractor shall promptly sign the Order and return it to the Project Manager and shall promptly proceed with performing the emergency Work. The Contractor, within five (5) Days after receiving the Field Order Directive, shall provide the Project Manager with a complete subcontractor’s request including all pertinent documentation. Within five (5) days after completing the work the Contractor shall provide the Project Manager with an itemized invoice attributable to the emergency work, based on the criteria and methods agreed upon.

**ATTACHED EXHIBITS**

- Exhibit A Statement of Work and General Conditions
- Exhibit B Work Order Form
- Exhibit C Work Order Change Form
- Exhibit D Insurance Certificate Exhibit
- Exhibit E Prevailing Wage Schedules
- Exhibit F Field Order Directive

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**Contract Control Number:** GENRL-202262099-00  
**Contractor Name:** NETWORK INFRASTRUCTURE CONSTRUCTION COMPANY

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**  
COMPANY

GENRL-202262099-00  
NETWORK INFRASTRUCTURE CONSTRUCTION

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

Name: scott wendland  
(please print)

Title: President, NICX  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## **EXHIBIT A SCOPE OF WORK AND TECHNICAL REQUIREMENTS:**

### **A.1 SCOPE OF WORK/ REQUIREMENTS**

The City and County of Denver is seeking an experienced, well-qualified Supplier to provide emergency restoration, and maintenance services necessary to maintain approximately three hundred (300) miles of fiber optic cable and conduit infrastructure. Most of the City's network was either installed via horizontal boring or open trench. Overhead cable exists in areas of the City and is indicated on the city fiber maps. Copies of City owned fiber maps are available upon request.

The City has both single and multi-mode fiber infrastructure servicing all traffic signals, more than fifty (50) City owned buildings and facilities, Denver International Airport (DEN) and the facilities of other municipal or state organizations within the City and County of Denver.

The City is seeking a contractor to provide, at minimum, the following services:

- **Restoration services:** respond to fiber optic cable and conduit infrastructure damage 24 hours a day, 365 days a year to restore damaged fiber optic infrastructure. Response times are indicated below.
- **Maintenance services:** install additional, and improve and maintain existing, fiber optic infrastructure and documentation on an as-needed basis. Migration, Rehabilitation, Conversion and Decommissioning are included.

### **A.2 ELIGIBILITY REQUIREMENTS:**

#### **A. Qualifications and Experience**

Extensive knowledge of Emergency Fiber Restoration and Maintenance Services, and an established track record of fiber location, emergency restoration, and maintenance services for local governments.

At the time of application, the City requests that applicants provide a list of currently held certifications. Examples include:

- Coming LAN 500 Certification
- Coming Fiber Design (CFD)
- 3M Fiber Optic Technician
- 3M Cable/Locating & Diagnostics Technician
- AMA Basic Supervision
- Ameritech Meridian 1 Installation and Maintenance
- AT&T Digital Networks
- AT&T Sonet Networks
- Autocad BICSI Cabling Technician
- EESCO Installing Fiber Optic LAN Systems
- ETA Certified Cable Installer
- Fiber Optic Association Certified (FOA)
- Fluke Certified Test Technician
- Light Brigade Fiber Optic Design, Installation and Maintenance
- Lindsay CATV Antenna Systems Design



- Maintenance & Repair of Laser Precision OTDRs
- Maintenance & Repair of Siecorm M9Q Splicers
- Maintenance for Siecorm Fusion Splicer
- NCTI CATV Fiber Technician
- NCTI Installer Technician
  - NCTI Service Technician
- NCTI System Technician
- NORDXJCDT Structured Cabling System
- Ortronics Installer Technician

## **B. Prime Contractor**

The successful supplier must assume responsibility as Prime Contractor for this engagement and shall not subcontract any services without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the resulting agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of the resulting agreement be incorporated herein.

### **A.3 SCOPE OF WORK:**

The City is seeking a Supplier to provide the following services:

#### **A. Fiber Restoration**

- Supplier shall provide fiber restoration and maintenance services to support the DOTI System Operations fiber technicians and the specific locations required for support of the citywide fiber/conduit infrastructure.
- Supplier will be responsible for providing qualified personnel, tools, and equipment to perform various types of fiber optic repair needed in the field, including but not limited to mid-span fusion splicing, trunk splicing, optical time-domain reflectometer (OTDR) testing, fiber enclosure installations, termination of fiber inside fiber trays and full fiber sections replacement.
- Supplier shall perform clearing, repair, and installation of ducts, handholes, restoration, fiber optic cable pulling, splicing, termination, testing and all other specifications per City provided plan.
- Service to a fiber optic cable infrastructure includes any item of a complete fiber cable run between and to termination patch panels, including termination patch panels, terminations at patch panels, fiber optic cable, fiber cable splices, pole/building attachments, loop and splice enclosures/boxes, etc.
- On occasion, the Supplier may be required to work in close proximity to the rail right-of-way. The Supplier will be required to follow all rail right-of-way procedures. Any future permits or fees required by the Railroad will be the responsibility of the Supplier.
- For services affecting emergency restoration, supplier must be available to perform services 24 hours a day, every day of the year.
  - All emergency situations require an immediate response of 24 hours to begin

restoration but expect functionality within 4 hours of the start of restoration. All standard situations (all other situations not deemed "emergencies") must be responded to and have work begin within 72-hours. Supplier shall perform temporary restoration when damage is so severe that a four (4) hour restoration period cannot be completed. Supplier have temporary splice cable in place to restore critical services within 4 hours after damage is assessed, then start final restoration/repair and complete within five (5) days.

- For emergency restorations that do not affect service (e.g. if non-used fiber strands are damaged and need to be repaired), the Supplier shall complete all services as scheduled by the City.
- Supplier shall test all repaired fiber optic cable and submit test results to the City.
- Supplier shall notify the City of any breaks, events, or incidents immediately.
- Supplier shall keep documentation of every restoration and send to the designated City point-of-contact at each step:
  - Time the call was received
  - Pictures of event immediately as they arrive on site (regardless of fault)
  - Damage assessment (writing and pictures)
  - Repair documentation (how was repaired (writing)) with accompanying pictures showing temporary and final restoration.

## B. Maintenance

- The Supplier shall install additional, and improve and maintain existing, fiber optic infrastructure and documentation on an as-needed basis. Inspections of the network may be requested on an annual basis. Inspection includes bi-directional OTDR testing of all unused and used strands of fiber, checking conditions of splices and hand holes.
- Supplier shall provide troubleshooting and analysis on fiber circuits as requested by the City. This troubleshooting will include bi-directional OTDR testing. Analysis including instrument output charts will be provided. After completing and communicating any issues, supplier must request approval to correct issues. During outages, fiber testing and troubleshooting may require emergency response.
- Migration includes the process of vacating old cabling and migration onto new cabling. Rehabilitation includes the replacement of outdated damaged and /or undersized splice enclosures and termination locations. Conversion includes the communications channel from one type of glass to another. Decommissioning includes the vacating of an above ground splice location by removing cabling and slicing them in an underground splice enclosure.

## C. Emergency Services

- When called for emergency services, Contractor will **respond** to the site within two (2) hours to determine the number of workers in coordination with the City, the type of equipment, and supplies required to complete work. The Contractor will only be paid for the number of workers authorized by the City. The Contractor will commence work as soon as practical, and no later than the next business day, and will provide a "not-to-exceed" cost estimate to the using agency.
- Services performed under this proposal will be limited to those services and goods specifically authorized by the City's agency, and no payment will be made by the City for work not authorized in advance. The City may continue to work, or if in the City's best interest, it may continue the service

under other contracts.

- The Contractor will not be able to invoice the City for services until a Purchase Order (or work order) is received from the using agency. The using agency is required to create a task order as soon as practical after the service is ordered.

**D. Overall Contract Procedures:**

- Material costs and supportive services by subcontractors shall be marked up no more than the quoted markup. Copies of invoices for materials and subcontracts will be provided with billing to the City upon request. The City reserves the right to provide materials, but such materials shall not be subject to contractor's warranty.
- "Journeyman" is defined for purposes of this agreement as a tradesman, craftsman or technician, skilled in the service performed, who is regularly paid at least the prevailing wage for the trade, and who has a minimum of five years of experience or certification of completion of a bona fide apprenticeship program for the trade, fully competent to do the work, and may apply at any gender. Contractors with apprentices who are registered with (BAT) the Bureau of Apprenticeship & Training may use those rates to calculate their quoted hourly rate. Note that BAT limits the ratio of apprentice to journeyman to a 1 to 1 ratio.
- Must be licensed/registered (as required) by the building inspection division of the City and County of Denver for the items bid. Either an employee or an owner can hold the license but must be valid throughout the life of the contract. Contractor will include copy of current license/registration bid.
- In the event friable asbestos or other hazardous material is encountered, contractor shall notify the City and the City will be responsible for abatement.
- Invoicing Requirements:
  - o Contractor must be capable of providing invoices that include the following details:
    - Invoice number
    - Invoice date
    - Service date(s) or service period
    - PO number (will be provided to contractor when assigned)
    - Service location (Building name and address)
    - Facility Code (list will be provided to the contractor)
    - Itemized charges, including unit of measurement
      - E.g.
        - o Hours worked
        - o Materials
          - Fiber LF
    - Total charge
  - o Contractor shall also provide monthly statement billing (as required).

**E. General Information:**

- All Materials left over from a job but charged to the City and all equipment or materials removed from the City's facilities shall remain the property of the City unless released by the City' representative as unsalvageable waste.
- All jobs MUST BE INVOICED no later than 5 days after the completion of service.

#### **A.4 ESTIMATED QUANTITIES:**

Quantities listed are the City and County of Denver's best estimate and do not obligate the City to order or accept more than City and County of Denver's actual requirements during the period of this contract, as determined by actual needs and availability of appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement of the materials specified in this IFB for the contract period.

#### **A.5 F.O.B. POINT:**

All prices quoted must be quoted at a firm price F.O.B. Denver, Colorado.

#### **A.6 AIRPORT SECURITY:**

It is a material requirement of this Contract that the Vendor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Vendor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Vendor or any of its employees, subcontractors, and vendors of any rule, regulation, or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Contract for cause.

The Vendor shall promptly upon notice of award of this Contract, meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for Vendor's operations under this Contract. The Vendor shall obtain the proper access authorizations for all of its employees, subcontractors, and vendors who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Vendor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Contract, the Vendor shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Vendor may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Vendor's operations at the Airport.

The Vendor shall return to the City at the expiration or termination of this Contract, or upon demand by the City, all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If the Vendor fails to do so, the Consultant shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Vendor under this Contract.

#### **LAWS, REGULATIONS, TAXES AND PERMITS**

The Vendor and Supplier shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

The Vendor, at all times, shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work.

Without limiting the foregoing, the Vendor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration laws. Failure to comply with this condition satisfactorily may cause the City to terminate this Contract.

#### **A.7 EMERGENCY PURCHASES:**

The City and County of Denver reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the vendor.

#### **A.8 PREVAILING WAGES**

Any Contract in the amount of two thousand dollars (\$2,000.00) or more arising out of this proposal shall be subject to the following provisions concerning prevailing wages.

Wages can be found here: <https://www.denverauditor.org/denverlabor/>

- a. The minimum wages to be paid for every class of labor, mechanics and worker shall be not less than the scale of wages from time to time determined to be the prevailing wages.
- b. The Vendor or his/her subcontractor shall pay mechanics, laborers and workers employed directly upon the site of the work the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the specifications, and any addenda thereto, on the actual date of proposal opening, or in effect on the date of grant of permit for performance of such work under D.R.M.C. Section 49-171 et seq., or on the date of the written Purchase Order for contracts let by informal procedure under D.R.M.C. Section 20-63(b), regardless of any contractual relationship which may be alleged to exist between the vendor or subcontractor and such laborers, mechanics and workers.
- c. The vendor and subcontractors to pay all workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment except that the vendor and subcontractor shall make such payments to non-construction workers such as janitorial or custodial workers at least twice per month.
- d. The vendor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the vendor and all subcontractors working under the vendor.
- e. If the vendor or any subcontractor shall fail to pay such wages as are required by the contract, the Auditor shall not approve any warrant or demand for payment to the vendor until the vendor furnishes the Auditor evidence satisfactory to the Auditor that such wages so required by the contract have been paid.
- f. The vendor shall furnish to the Auditor each week during which work is in progress under the contract, a true and correct copy of the payroll records of all workers, laborers and mechanics employed under the contract, either by the vendor or subcontractors.
- g. The copy of the payroll record shall be accompanied by a sworn statement of the vendor that the copy is a true and correct copy of the payroll records of all mechanics, laborers or other workers working under the contract either for the vendor or subcontractors, that payments were made to the workers, laborers and mechanics as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers, mechanics and other laborers employed on work under the contract, either by the vendor or by any subcontractor, have been paid the prevailing wages as set forth in the contract specifications.

- h. If any laborer, worker or mechanic employed by the vendor or any subcontractor under the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the City may, by written notice to the vendor, suspend or terminate the vendor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and in the event of termination may prosecute the work to completion by contract or otherwise, and the vendor and any sureties shall be liable to the City for any excess costs occasioned the City thereby.

The Vendor and every subcontractor under this contract shall:

- a. Pay every worker, mechanic and laborer employed under this purchase order or contractual agreement not less than the scale of wages as determined by the Career Service Board under subsection (c) of Section 20-76 of the Revised Municipal Code.
- b. Pay all workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications.
- c. Post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the vendor and all subcontractors working under the vendor.
- d. Furnish the Auditor each week during which work is in progress under the purchase order or contractual agreement, a true and correct copy of the payroll records of all workers, laborers and mechanics employed under the contract, either by the vendor or subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the contract, the hourly pay of each such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the vendor that the copy is a true and correct copy of the payroll records of all mechanics, laborers, or other workers working under the contract either for the vendor or subcontractors, that payments were made to the workers, laborers and mechanics as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers, mechanics and other laborers employed on work under the contract, either by the vendor or by any subcontractor have been paid the prevailing wages as set forth in the contract specifications.

If the vendor or any subcontractor shall fail to pay such wages as are required by the purchase order or contractual agreement, the Auditor shall not approve any warrant or demand for payment to the vendor until the vendor furnishes the Auditor evidence satisfactory to the Auditor that such wages so required by the purchase order or contractual agreement have been paid.

If any laborers, worker or mechanic employed by the vendor or any subcontractor under the purchase order or contractual agreement has been or is being paid a rate of wages less than the rate of wages required by the purchase order or contractual agreement to be paid as aforesaid, the City may, by written notice to the vendor, suspend or terminate the vendor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages and, in the event of termination, may prosecute the work to completion by contract or otherwise, and the vendor and any sureties shall be liable to the City for any excess costs occasioned the City thereby.

Information as to forms and other requirements concerning prevailing wages may be obtained from the City Auditor's office, Prevailing Wage Section, 201 West Colfax, Denver, CO 80202, telephone 720-913-5009

#### **A.9 PAYMENT OF LIVING WAGES PROVISIONS:**

Any direct service contract in excess of two thousand dollars (\$2,000.00) arising out of this proposal shall be subject to the following provisions concerning the payment of living wages to Covered Workers: Section 20-80 of the City's Revised Municipal Code and, in the event of any inconsistency between the Code provisions and

following provisions, the Code provisions shall govern.

- a. Wages can be found here: <https://www.denverauditor.org/denverlabor/>
- b. Every person engaged in the work of a parking lot attendant, security guard, or child care worker at any public building or public parking facility owned by the City, or clerical support worker, pursuant to a direct service contract with the City, shall be paid not less than the Living Wage as set forth in this proposal.
- c. The Vendor or his/her subcontractor shall pay Covered Workers employed directly upon the site of the work the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the specifications, and any addenda thereto, on the actual date of proposal opening, or on the date of the written Purchase Order for contracts let by informal procedure under D.R.M.C. Section 20-63(b), regardless of any contractual relationship which may be alleged to exist between the vendor or subcontractor and such Covered Workers.
- d. The vendor shall post in a prominent and easily accessible place to Covered Workers at the site of the work the scale of the Covered Workers' wages to be paid by the vendor and all subcontractors working under the vendor.
- e. If the vendor or any subcontractor shall fail to pay such wages as are required by the contract, the City may, at its option, by written notice to the vendor, withhold further payments to the vendor, or suspend or terminate the vendor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages. In the event of termination, the vendor shall be liable to the City for any excess costs occasioned the City thereby.
- f. The vendor shall furnish to the City's Auditor, upon the Auditor's request, a true and correct copy of the payroll records of all Covered Workers employed under the contract, either by the vendor or subcontractors. Such records will include the number of hours worked by each Covered Worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by each Covered Worker.
- g. The copy of the payroll record shall be accompanied by a sworn statement of the vendor that the copy is a true and correct copy of the payroll records of all Covered Workers working under the contract either for the vendor or subcontractors, that payments were made to the Covered Workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all Covered Workers employed on work under the contract, either by the vendor or by any subcontractor, have been paid the living wages as set forth in the contract specifications.

As used herein, the "Living Wage" shall equal the amount set forth as the poverty guideline for the forty-eight (48) contiguous states and the District of Columbia for a family unit of four (4), updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), divided by the number 2080.

#### **A.10 MINIMUM WAGE ORDINANCE**

The services being requested in this solicitation may involve services that are covered pursuant to Division 3.75 of Article IV of Chapter 20 of the Denver Revised Municipal Code ("D.R.M.C."), which is designed to address the issue of wage equity and cost of living affordability in the City & County of Denver. Vendor agrees that any contract with the City shall include a requirement that Vendor will comply with the provisions of D.R.M.C. §§20-82 through 20-84, including, but not limited to, paying all covered workers no less than the City Minimum Wage for all covered services rendered in connection with the Contract. Additionally, Vendor agrees that the contract shall require compliance with all current and future federal and state laws and City ordinances.

Wages can be found here: <https://www.denverauditor.org/denverlabor/>

[https://denverauditor.org/wp-content/uploads/2019/06/MinWage\\_overview\\_flier\\_2019.pdf](https://denverauditor.org/wp-content/uploads/2019/06/MinWage_overview_flier_2019.pdf)

**A.11 VENDOR PERFORMANCE MANAGEMENT:**

Awarded contractors are required to furnish a performance report to the analyst on an annual basis, no later than the anniversary date of the applicable City Contract, providing at a minimum the following information:

**FOR SERVICES**

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Average response time after receipt of call from the City
- Average time for job completion

Contractor may also be required to provide additional specific reporting/data as required.

**A.12 DUE DATE FOR PRICING UPDATES:**

YEAR	PRICING UPDATE DUE DATE	PRICING PERIOD
1	December 15 <sup>th</sup>	January 1 through December 31

Pricing updates must be based upon documented supplier’s price increases and must be verifiable (e.g. letter from the manufacturer(s), market indexes, and etcetera. Discount percentages or percentages mark-up quoted must remain constant.

The vendor must provide a complete template that includes both items with price changes as well as items where changes are not requested. Items with price increases must be clearly identified.

If the 15th of the month falls on a Holiday or Weekend, pricing update is due the next business day.

If the pricing update for items in the Item File is not submitted by the 15th, pricing will remain unchanged for the following year.

**A.13 BACKGROUND CHECKS:**

Contractor, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the City. The term “employee” for the purpose of this requirement, includes anyone who is providing services for the City under this Contract. Background checks are to be conducted through an independent background check vendor and must include the following:

- Social Security Number Trace;
- Federal Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Colorado Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Criminal Records from other States if the employee disclosed, or the background check identifies, that the employee lived in another state in the last seven years (includes wants, warrants, arrests, convictions, and incarcerations); and
- National Sexual Offender Registry Search.

The background check shall include all convictions for the last seven years and may include additional convictions



beyond seven years when permitted and/or required by law.

In addition to the foregoing background check, certain City locations require employees to pass a NCIC background check. These background checks will be administered by the City and will be at no cost to the Contractor. Contractor employees will be required to provide their social security numbers to the City. Contractors will be provided entrance cards for each facility. Contractors are not allowed to share cards to provide services. The following locations require NCIC background checks:

- Police Academy
- Denver Animal Shelter
- Traffic Operations
- DPD Police Precincts

The background check(s) must be conducted successfully prior to initial access and/or involvement by employees. Employees who separate from the Contractor's employment must undergo another background check prior to renewed access and/or involvement in providing services to the City. The City also has the ability to audit the Contractor's background check process, to ensure compliance with City standards, at any time. Additionally, all employees are required to self-disclose to the Contractor any criminal charges and convictions and nolo contendere pleas (not contest pleas) that occur while providing services to the City within three business days of the conviction, charge, or plea. Contractor is required to inform the City of any criminal charges or convictions or nolo contendere pleas (no contest pleas) that arise while an employee is on assignment with the City. Contractor must inform the City within one business day of the Contractor having knowledge of the charge, conviction, or plea. The City will determine, in its sole discretion, whether the employee will remain on a City assignment.

Failure by the Contractor to comply with the terms of this Section may result in the termination of its contract with the City.

**EXHIBIT A**

<b>FIBER CABLING INSTALLATION AND FIBER SPLICING</b>					
<b>Scope of Work</b>	<b>Number of Splices and/or Fibers</b>	<b>Max Technician Minutes Required to Complete</b>			
<b>Butt Splice Labor to Include Setup, Cable and Closure Prep, Fusion Splice and Heat Shrinks</b>	24 Splices		<b>90</b>		
	48 Splices		<b>150</b>		
	96 Splices		<b>300</b>		
	144 Splices		<b>430</b>		
	216 Splices		<b>570</b>		
	288 Splices	<b>840 Loose tube ( 230 Ribbon)</b>			
	432 Splices	<b>1600 loose tube (540 ribbon)</b>			
<b>Midsheath Labor to include Ring Cut on Backbone; Cable and Closure Prep, Fusion Splice and Shrinks</b>	1 to 24 Fibers		<b>120</b>		
	25 to 48 Fibers		<b>180</b>		
	49 to 72 Fibers		<b>240</b>		
	73 to 144 Fibers		<b>420</b>		
	145 to 288 Fibers		<b>780</b>		
<b>Fiber Distribution Panel Point Labor to Include Panel Install, Route and Rack, Cable Prep, Fusion Splice and OTDR Test</b>	24 Splices		<b>130</b>		
	48 Splices		<b>210</b>		
	96 Splices		<b>330</b>		
	144 Splices		<b>450</b>		
	216 Splices		<b>630</b>		
	288 Splices	<b>840 Loose tube ( 310 Ribbon)</b>			
	432 Splices	<b>1600 loose tube (630 Ribbon)</b>			
<b>Job Title</b>	<b>\$/hour - 24-Hour Response Time</b>	<b>24-Hour Response Team - Minimum Minutes Billed</b>		<b>\$/hour - 72-Hour Response Time</b>	<b>72-Hour Response Team - Minimum Minutes Billed</b>
<b>Supervisor</b>	\$ 156.25		120	\$ 125.00	30
<b>Engineering</b>	\$ 138.13		120	\$ 110.50	60
<b>Technician</b>	\$ 103.13		240	\$ 82.50	60
<b>Truck Driver</b>	\$ 80.63		240	\$ 64.50	60
<b>Laborer</b>	\$ 48.13		240	\$ 38.50	60
<b>Mobile Hydraulic Equipment Operator</b>	\$ 75.00		240	\$ 60.00	60
<b>Traffic Control Supervisor</b>	\$ 90.00		240	\$ 72.00	60
<b>MATERIALS</b>		<b>PERCENT MARK-UP</b>			
				15%	

**EXHIBIT B**  
**GENERAL SERVICES ON-CALL CONTRACT WORK ORDER FORM**



**CONTRACTS  
OFFICE**  
DENVER GENERAL SERVICES

Administered by:  
 Department of General Services Contracts Office  
 201 W. Colfax Ave., Dept. 1110  
 Denver, CO 80202  
[GScontracts@denvergov.org](mailto:GScontracts@denvergov.org)

Work Order Title & Description:

Contractor Name:

Agency Requester:

Contract No.:

202262099

Agency:

Workday Contract No.:

Requester Phone # and Email:

Fund/Cost Center/Spend Category/PRJ/Program:

Send Invoices To (email):

Emergency Auth. Code:

\*As applicable

It is hereby mutually agreed that when this **WORK ORDER** has been signed by the contracting parties, the following described scope of work shall be executed by the **CONTRACTOR** in accordance with all contract documents and as herein stipulated and agreed.

The sum, as indicated in the attached scope of work, constitutes full and complete consideration, payment and satisfaction to the Contractor for this Work Order and the Contractor hereby agrees to make no further claims, demands, or requests of any kind whatsoever for further monies, extensions of time, or other consideration for the described scope of work to the Contract.

**THE CONTRACTOR AGREES** to furnish all services, material, labor and perform all work/tasks required to complete the scope of work described and any changes in accordance with requirements for similar work covered by the Work Order, except as otherwise stipulated herein, for the following considerations:

The Lump Sum of (\$XX.XX):

Work Order Completion Date\*:

\*Form will not be accepted without a completion date.

Liquidated Damage:

Accepted for Contractor By:

Contractor Email:

Contractor Signature:

Title:

Date:

**USING AGENCY**

I hereby certify that funds are available that will be reserved to pay the Contractor in full for the work to be performed under this **WORK ORDER**.

By Using Agency – Administrative or Budget Office

Date

**APPROVALS**

Approved by Requestor,

Date

Approved by Division Director

Date

DISTRIBUTION: Auditor, Contract Administration, General Services Contract Compliance Technician, DSBO, and Contractor.

**GENERAL SERVICES ON-CALL CONTRACT WORK ORDER CHANGE FORM****CONTRACTS  
OFFICE**  
DENVER GENERAL SERVICESAdministered by:  
Department of General Services Contracts Office  
201 W. Colfax Ave., Dept. 1110  
Denver, CO 80202  
[GScontracts@denvergov.org](mailto:GScontracts@denvergov.org)

Work Order Title:

Contractor Name:

On-Call Contract No.:

Supplier ID No.:

Workday PO No.:

Agency:

Agency Requestor:

Fund/Cost Center/Spend Category:

It is hereby mutually agreed that when this **WORK ORDER CHANGE** has been signed by the contracting parties, the following described changes shall be executed by the **CONTRACTOR** without changing the terms of the Contract.

Modifications to the Work Order described in the attached narrative and summarized in the attached scope of work dated \_\_\_\_\_ and attached as Exhibit A.

**THE CONTRACTOR AGREES** to furnish all services, material, labor and perform all work/tasks required to complete the scope of work described and any changes in accordance with requirements for similar work covered by the Work Order Change, except as otherwise stipulated herein, for the following considerations:

Add/subtract from the Work Order the sum of: (\$XX.XX)

Work Order Revised Completion Date:

Accepted for Contractor By:

Contractor Signature:

Title:

Date:

**WORKDAY PO NO.:**

Original Work Order Amount: \$

Original Work Order Duration:

Original Work Order Completion Date:

**This Work Order Change (+/-):****New Work Order Total:**

Adjust the Work Order Completion Date by: \_\_\_\_\_ calendar days

**New Work Order Completion Date:****USING AGENCY**

I hereby certify that funds are available that will be reserved to pay the Contractor in full for the work to be performed under this **WORK ORDER CHANGE**.

\_\_\_\_\_  
By Using Agency – Administrative or Budget Office

Date

**APPROVALS**\_\_\_\_\_  
Approved by Requestor,

Date

\_\_\_\_\_  
Approved by Division Director

Date

NOTE: No persons shall authorize or perform any of the above until the Work Order Change has all signatures and has been distributed alongside a Notice to Proceed

DISTRIBUTION: Auditor, Contract Administration, General Services Contract Compliance Technician, DSBO, and Contractor.





**TO:** All Users of the City and County of Denver Prevailing Wage Schedules  
**FROM:** Ryland Feno, Classification & Compensation Technician II  
**DATE:** March 08, 2021  
**SUBJECT:** Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, March 05, 2021** and applies to the City and County of Denver for **HEAVY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20210002  
Superseded General Decision No. CO20200002  
Modification No. 1  
Publication Date: 03/05/2021  
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

**\*Career Service Board approved to adjust all Davis Bacon classifications under \$13.00 to comply with the city's minimum wage. The effective date is August 15, 2019. See page 7 for reference.**

Office of Human Resources  
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202  
p: 720.913.5751 | f: 720.913.5720  
[www.denvergov.org/humanresources](http://www.denvergov.org/humanresources)

"General Decision Number: CO20210002 03/05/2021

Superseded General Decision Number: CO20200002

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/01/2021
1	03/05/2021

ASBE0028-001 07/01/2019

Rates Fringes

Asbestos Workers/Insulator  
(Includes application of  
all insulating materials,

protective coverings,  
 coatings and finishings to  
 all types of mechanical  
 systems).....\$ 32.98 14.73

BRCO0007-004 01/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
 JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 29.52	10.48

BRCO0007-006 05/01/2018

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 25.88	10.34

ELEC0012-004 06/01/2019

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN		
Electrical contract over		
\$1,000,000.....	\$ 27.50	12.50+3%
Electrical contract under		
\$1,000,000.....	\$ 24.85	12.50+3%

ELEC0068-001 06/01/2020

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
 JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 38.00	16.97

ELEC0111-001 09/01/2020

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 22.04	24.25%+6.80
Line Equipment Operator.....	\$ 35.61	24.25%+6.80





Laborers:

Pipelayer.....\$ 18.68 6.78

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PLUM0003-005 06/01/2020

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PLUMBER.....\$ 43.63 16.67

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PLUM0058-002 07/01/2018

EL PASO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

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PLUM0058-008 07/01/2018

PUEBLO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

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PLUM0145-002 07/01/2016

MESA COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 35.17 11.70

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\* PLUM0208-004 01/01/2021

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PIPEFITTER.....\$ 39.10 13.77

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SHEE0009-002 07/01/2019

Rates Fringes

Sheet metal worker.....\$ 34.62 17.95

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TEAM0455-002 07/01/2020

	Rates	Fringes
Truck drivers:		
Pickup.....	\$ 22.66	4.42
Tandem/Semi and Water.....	\$ 23.29	4.42

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SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	
Carpenters:		
Form Building and Setting...	\$ 16.97	2.74
All Other Work.....	\$ 15.14	3.37
Cement Mason/Concrete Finisher...	\$ 17.31	2.85
IRONWORKER, REINFORCING.....	\$ 18.83	3.90
Laborers:		
Common.....	\$ 11.22	2.92
Flagger.....	\$ 8.91	3.80
Landscape.....	\$ 12.56	3.21
Painters:		
Brush, Roller & Spray.....	\$ 15.81	3.26
Power equipment operators:		
Backhoe.....	\$ 16.36	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37	4.41

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.  
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**Office of Human Resources  
Supplemental Rates  
(Specific to the Denver Projects)  
(Supp #74, Revised: 08-21-2019)**

<b>Classification</b>		<b>Base</b>	<b>Fringe</b>
Ironworker	Ornamental	\$24.80	\$10.03
Laborer	Group 1	\$18.18	\$8.27
	Group 2	\$21.59	\$8.61
Laborer (Common)		\$13.00	\$2.92
Laborer (Flagger)		\$13.00	\$3.80
Laborer (Landscape)		\$13.00	\$3.21
Laborer (Janitor)	Janitor/Yardmen	\$17.68	\$8.22
Laborer (Asbestos)	Removal of Asbestos	\$21.03	\$8.55
Laborer (Tunnel)	Group 1	\$18.53	\$8.30
	Group 2	\$18.63	\$8.31
	Group 3	\$19.73	\$8.42
	Group 4	\$21.59	\$8.61
	Group 5	\$19.68	\$8.42
Line Construction	Lineman, Gas Fitter/Welder	\$36.88	\$9.55
	Line Eq Operator/Line Truck Crew	\$25.74	\$8.09
Millwright		\$28.00	\$10.00
Power Equipment Operator	Group 1	\$22.97	\$10.60
	Group 2	\$23.32	\$10.63
	Group 3	\$23.67	\$10.67
	Group 4	\$23.82	\$10.68
	Group 5	\$23.97	\$10.70
	Group 6	\$24.12	\$10.71
	Group 7	\$24.88	\$10.79
Power Equipment Operator (Tunnels above and below ground, shafts and raises):	Group 1	\$25.12	\$10.81
	Group 2	\$25.47	\$10.85
	Group 3	\$25.57	\$10.86
	Group 4	\$25.82	\$10.88
	Group 5	\$25.97	\$10.90
	Group 6	\$26.12	\$10.91
	Group 7	\$26.37	\$10.94
Truck Driver	Group 1	\$18.42	\$10.00
	Group 2	\$19.14	\$10.07
	Group 3	\$19.48	\$10.11
	Group 4	\$20.01	\$10.16
	Group 5	\$20.66	\$10.23
	Group 6	\$21.46	\$10.31

Go to <http://www.denvergov.org/Auditor> to view the Prevailing Wage Clarification Document for a list of complete classifications used.



EXHIBIT F

FIELD ORDER DIRECTIVE

INFORMAL APPROVAL OF SUBCONTRACTOR (FOR EMERGENCY USE ONLY)

Contractor Name:

Contractor Representative:

Requested Subcontractor:

Subcontractor Representative:

RE: Contract No.:

Project Name:

Date of Directive:

The contractor is directed to immediately perform the identified emergency work and to utilize the requested subcontractor.

This field directive informally authorizes the contractor to utilize the requested subcontractor in performance of the emergency work. The contractor, in conjunction with the Project Manager, is required to formally submit a subcontractor request within five (5) days of after receiving this executed Field Order Directive.

Project Manager \_\_\_\_\_ Date \_\_\_\_\_

Contractor Company Name \_\_\_\_\_

Contractor Representative Name/Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_