

# JOB ORDER CONTRACT

AGREEMENT made as of \_\_\_\_, March 2024, between The Town of Eagar ("Town") and Nicoll Electric, LLC ("Contractor").

**WHEREAS**, Town requires certain professional electrical contractor services for agreed upon projects ("Project"); and

**WHEREAS**, Contractor represents that it has the necessary expertise to provide such services in accordance with the terms of this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

1. Services. Contractor shall perform non-exclusive electrical contract services on agreed upon projects in a competent and professional manner to the satisfaction of Town.
2. Contractor's Expertise. Contractor warrants that it has the ability, authority, capacity and professional expertise to perform this Agreement. Contractor shall provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed hereunder. Contractor shall keep electrician license in place while providing the Town professional services and shall inform the Town if license is not current.
3. Independent Contractor. Contractor acknowledges that it is an independent contractor. Neither party is or shall purport to be an agent, employee, partner, joint venturer or associate of the other. An employee or agent of one party shall not be deemed an employer or agent of the other party for any purpose. Taxes or Social Security contributions will not be withheld from any payment by Town, and Contractor shall be solely responsible for such matters.
4. Subcontracts. Contractor shall not enter into any subcontract with respect to any of the work to be performed hereunder without Town's prior written approval. All subcontracts shall comply with applicable federal and state laws and regulations and shall impose on the subcontractor substantially the same obligations as are imposed on Contractor by this Agreement with respect to those matters covered by Sections 8, 9, 10, 12, 15 and 18. Contractor is responsible for full performance of this Agreement regardless of whether subcontractors are used.

5. Time for Completion. Contractor's services will be provided in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, and in accordance with an agreed upon schedule for the performance of the Services hereunder. Time limits established by a schedule approved by Town shall not, except for reasonable cause, be exceeded by Town or Contractor. The Project Schedule is attached hereto and by this reference incorporated herein The Schedule shall be adjusted, if necessary, as the Project proceeds. The date for final performance shall be extended by the number of days that performance is delayed by governmental approval or review procedures or other causes beyond Contractor's reasonable control, as jointly confirmed in writing by' the parties' representatives.
6. Payment. Payment shall be determined and agreed upon by the Town on a per Job Order bid proposal, to be itemized on a monthly invoice, on a monthly basis. Payments shall be made within 30 days of Town's receipt of Contractor's monthly invoices. Each invoice shall detail the work requested, approved and performed during the billing period.
7. Defects in Work. Town may reject any work product that fails to meet customary professional standards or Project specifications. Contractor agrees to promptly remedy all such deficiencies. The parties shall make a good faith effort to resolve any controversy or claim through informal negotiation as set forth in Section 12, No compensation shall be paid for any rejected work until such issues have been resolved.
8. Insurance Requirements. Contractor shall maintain in effect, at all times during the term of this Agreement, insurance adequate to protect Town and its agents, representatives, officers, officials and employees against such losses as set forth below. Contractor shall provide Town with a current Certificate of Insurance or a certified copy of the insurance policy naming Town as an additional insured in not less than the following amount: One Million Dollars (\$1,000,000.00) Combined Single Limit of Liability per Occurrence.
9. Indemnity. To the fullest extent allowable by law, Contractor shall defend, indemnify and hold harmless Town and its representatives, officers, officials and employees (the "Indemnitees") from and against any and all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the costs of appellate proceedings) relating to, arising out of or resulting from Contractor's negligent acts, errors, mistakes or omissions in the performance of this Agreement. Contractor's duty to defend, hold harmless and

indemnify the Indemnitees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any negligent act, error, mistake or omission in the performance of this Agreement (including those by any person for whose negligent acts, errors, mistakes or omissions Contractor may be liable) to the extent of Contractor's negligence or fault. The amount and type of insurance coverage requirements set forth above shall not limit the scope of the indemnity in this paragraph.

10. Records. Contractor shall retain, and shall require each subcontractor to retain, all books, accounts, reports, files and other records relating to this Agreement for a period of five years after completion of the work. All such documents shall be subject to inspection and audit by Town upon reasonable notice during normal business hours. A legible copy of any or all such documents shall be produced by Contractor at the request and expense of Town.
11. Non-Assignment. Contractor shall not assign any right or interest in this Agreement without Town's prior written approval, nor shall Contractor delegate any duty hereunder without Town's prior written approval.
12. Negotiation of Disputes. The parties shall make a good faith effort to resolve any claim or controversy or claim through informal negotiation. Notice of any claim or controversy shall be provided in writing, with supporting documentation, to the recipient designated in Section 21. The recipient shall have seven calendar days to prepare and deliver a written response. If the parties fail to resolve the disputes within a reasonable period of not less than ten days, either party may pursue available legal remedies.
13. Suspension and Termination by Town:
  - A. Suspension. Town may, without cause, order Contractor in writing to suspend, delay or interrupt its performance in whole or part, an adjustment shall be made to the completion date and for any increase in the cost of performance resulting from the suspension, delay or interruption. No adjustment shall be made to the extent that performance is or would have been suspended, delayed or interrupted by another cause for which Contractor is responsible.
  - B. Termination for Cause. Town may terminate this Agreement for cause if Contractor refuses or fails to supply enough properly skilled workers to perform this Agreement; fails to make required payments to subcontractors; disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction; or otherwise commits a material breach of this Agreement. When any of the foregoing causes exist, Town shall give Contractor written notice and a ten-day opportunity to cure the default. If the

default remains uncured, Town may (without prejudice to any other rights or remedies it may have) terminate this Agreement and finish the work or cause it to be finished. If the unpaid balance of the Agreement exceeds the cost of finishing the work (including any expenses incurred by Town as a result of Contractor's default), Contractor shall be entitled to payment for its performance up to the amount of such excess. If the cost of finishing the work exceeds the unpaid balance, Contractor shall pay the difference to Town.

C. **Termination for Convenience.** Town, by written notice to Contractor, may terminate this Agreement in whole or part when in the sole discretion of Town it is in Town's best interests to do so. Contractor shall be paid for all material, equipment and services provided, as well as reasonable termination expenses and a reasonable allowance for profit and overhead, provided that such payments, exclusive of termination expenses, shall not exceed the total amount payable pursuant to Section 6 less any payments previously made to Contractor. Contractor shall not be entitled to profit and overhead on material, equipment and services which were not provided.

D. **Contractor's Responsibilities.** Upon receipt of a termination notice, Contractor shall (a) promptly discontinue all services (unless the notice directs otherwise), and (b) deliver or otherwise make available to Town copies of all data, design calculations, drawings, specifications, reports, estimates, summaries and other information and materials developed or accumulated by Contractor in performing this Agreement.

14. **Termination by Contractor.** Contractor may terminate this Agreement upon written notice to Town if performance is made impossible for a period of 30 consecutive calendar days for any of the following reasons through no act or fault of Contractor or its agents, employees or subcontractors: issuance of an order by a court or other public authority having jurisdiction; an act of government, such as a declaration of national emergency; or a natural disaster or other Act of God. Contractor may also terminate this Agreement upon written notice and a ten-day opportunity to cure if Town fails to make any payment within the time set forth in Section 6.
15. **Governing Law.** This Agreement shall be governed by the law of the State of Arizona. Any suit arising out of this Agreement shall be brought in the state courts of Arizona (with venue in Apache County), but only after informal negotiation pursuant to Section 12.
16. **Incorporation of Applicable Laws.** Every provision of law required by statute or regulation to be in this Agreement will be read and enforced as though included herein. Each party shall promptly notify the other upon discovery that any such provision has been omitted.



**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Agreement as of the date first written above.

On behalf of the *Town of Eagar*

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Brannon Eagar, Town Manager

On behalf of Nicoll Electric, LLC

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Daniel A. Nicoll