



# Town of Johnstown

450 S. Parish Ave.  
Johnstown, CO 80534  
(970) 587-4664

## **INVITATION FOR BIDS (IFB)**

**The Town of Johnstown, Colorado will receive sealed bids for the following project:**

### **2024 TOWN OF JOHNSTOWN ASPHALT PATCHING PROJECT**

Copies of the bid documents may be obtained at the Town Clerk's Office, 450 S. Parish Avenue, Johnstown, Colorado 80534 and Rocky Mountain E-Purchasing System at:  
[www.bidnetdirect.com//townofjohnstown](http://www.bidnetdirect.com//townofjohnstown).

A non-mandatory pre-bid meeting will be held at 450 S. Parish Avenue, Johnstown, Colorado 80534 on **April 17, 2024**, at **9:00 a.m. MST**.

All questions regarding this IFB should be directed to Mark Stanley, in writing via email, at [mstanley@johnstownco.gov](mailto:mstanley@johnstownco.gov) no later than **April 24, 2024**, at **5:00 p.m. MST**.

The Final Addendum will be issued on the Rocky Mountain E-Purchasing System at [www.bidnetdirect.com//townofjohnstown](http://www.bidnetdirect.com//townofjohnstown), on **April 30, 2024**.

Bids will be received by the Town Clerk at 450 S. Parish Avenue, Johnstown, Colorado 80534, until **2:00 p.m. MST** on **May 8, 2024**, at which time said bids will be publicly opened in the Town Hall conference room.

## CONTRACTING PROCEDURES

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**1.1 INVITATION FOR BIDS**

The Town of Johnstown, Colorado shall receive sealed bids for the following project:

**2024 TOWN OF JOHNSTOWN ASPHALT PATCHING PROJECT**

Bids shall be received by the Town Clerk at Town Hall, 450 S. Parish Ave., Johnstown, Colorado, until **2:00 p.m. MST** on **May 8, 2024** at which time said bids shall be publicly opened in the Town Hall Conference Room and read aloud.

Copies of the bid documents may be obtained at the Town Clerk's Office, 450 S. Parish Avenue, Johnstown, Colorado 80534 and Rocky Mountain E-Purchasing System at: [www.bidnetdirect.com//townofjohnstown](http://www.bidnetdirect.com//townofjohnstown).

The Town reserves the right to reject any or all bids, to waive any informalities, and to accept the bid that is in the best interests of the Town of Johnstown, Colorado.

**TOWN OF JOHNSTOWN, COLORADO**

By: Jason Elkins  
Jason Elkins, PE  
Public Works Director

## **1.2 INFORMATION FOR BIDDERS**

### **1.2.1 OWNER**

The Owner of this project is the Town of Johnstown, 450 S. Parish Avenue, Johnstown, Colorado 80534; phone number (970) 587-4664 and fax number (970) 587-0141 (herein called "OWNER" or the "TOWN").

### **1.2.2 PUBLIC WORKS DEPARTMENT**

The Project Representative and PUBLIC WORKS DEPARTMENT for the Town of Johnstown is Jason Elkins, P.E., phone number (970) 587-4664. The Alternate Representative is Mark Stanley, phone number (970) 587-4664.

### **1.2.3 BID SUBMITTAL**

Bids will be received by the Town Clerk of Johnstown, Colorado, at 450 S. Parish Avenue, Johnstown, CO 80534 until **2:00 p.m. MST** on **May 8, 2024**, and then at said place publicly opened and read aloud.

Each Bid must be submitted in a sealed envelope, addressed to:

Town Clerk  
Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534

Include a cover letter introducing your company, summarizing your qualifications, and detailing:

- a. Principal contact person for this RFP, including address, telephone number, email, and website address;
- b. Three (3) projects of similar magnitude and scope in the last three (3) years with references for each.

Each sealed envelope containing a bid must be plainly marked on the outside as bid for

### **2024 TOWN OF JOHNSTOWN ASPHALT PATCHING PROJECT**

and the envelope should bear on the outside the name of the bidder, their address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to: Town Clerk, Town of Johnstown, 450 S. Parish Avenue, Johnstown, CO 80534.

All bids must be made on the required bid sheet provided in **Exhibit A** of this IFB. All blank spaces for bid prices must be filled in, in ink or typewritten, and the bid sheet must be fully completed and executed when submitted. Only one copy of the bid sheet is required.

**Schedule of Events (subject to change)**

All times are local Colorado (MST) time

IFB Issued: .....April 11, 2024  
Pre-Bid Conference: ..... April 17, 2024 at 9:00 a.m.  
Inquiry Deadline: ..... April 24, 2024 at 5:00 p.m.  
Final Addendum Issued: .....April 30, 2024  
Bid Due Date and Time: ..... May 8, 2024 at 2:00 p.m.

**1.2.4 PROJECT SCOPE**

The Town of Johnstown is soliciting bids from qualified contractors to provide asphalt patching and asphalt overlays. Johnstown’s details and standards will be utilized for the work. This work consists of removal and replacement of asphalt pavements by milling, excavation, removal and replacement of subgrade, grade preparation, adjustment of utility access points, and associated traffic and erosion control within separate Town rights of way or on Town property.

This is a unit price project. Each line-item cost shall contain all associated costs to complete that item, including all necessary labor, supervision, equipment, tools, materials, transportation, haul, mobilization, and environmental or fuel/surcharge fees necessary to complete the work in accordance with the Project Construction Documents and the current Town of Johnstown Design Standards and Construction Specifications.

Specific locations have been identified for completion in 2024 as shown on the maps and quantity estimates provided. Additional line items have been included in the bid tab with minimal quantities to provide a comprehensive price list for future work, should funding be available, as well as to provide a basis for award.

Prepare a detailed schedule of all construction operations and procurements to be included in the Bid Package. The construction schedule and other information for the Bid Submittal will be used in qualifying each Contractor to complete the work in a timely manner.

**1.2.5 INFORMALITIES**

The TOWN may waive any informalities, minor defects, or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. In the event of strikes, wars, acts of God or other good cause as determined by the Town Manager, bid openings may be extended for a reasonable time not to exceed thirty calendar days. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the TOWN and the bidder.

**1.2.6 CONDITIONS OF WORK**

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid Schedule(s) by examination of the site. After bids have been submitted, the bidder shall not assert that there was a misunderstanding concerning the quantities of work or the nature of the work to be done.

Upon request, the TOWN shall provide to any and all bidders, prior to bidding, all information that is known to the TOWN and is pertinent to and delineates and describes the land owned and

rights-of-way acquired.

The Contract Documents contain the provisions required for the construction of the project. Information otherwise obtained from an officer, agent or employee of the TOWN or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

#### **1.2.7 BID SECURITY**

Each bid must be accompanied by a Bid Bond payable to the Town for five percent of the total amount of the base bid. As soon as the bid prices have been compared, the TOWN will return the bonds of all except the three lowest responsible bidders within three days after the date of the bid opening. When the Agreement is executed, the Bid Bonds of the two remaining unsuccessful bidders will be returned. The Bid Bond of the successful bidder will be retained until the Agreement, Payment Bond and Performance Bond have been executed and approved, after which it will be returned.

A Performance Bond and Payment Bond, each in the amount of 100 percent of the Contract Price, with a corporate surety approved by the TOWN, will be required for the faithful performance of the contract.

#### **1.2.8 POWER OF ATTORNEY**

Attorneys-in-fact who sign the Bid Bonds or Payment Bonds and Performance Bonds must file with each bond a certificate and effective dated copy of their Power of Attorney.

### **1.3 AWARD OF CONTRACT**

Each bidder is responsible for inspecting the site and informing himself of the conditions under which the work is to be performed and for reading and being thoroughly familiar with the Contract Documents. The bidder's inspection shall cover the ground structure, obstacles which may be encountered, location of water tables, and other matters relevant to the work both above and below ground. Where test boring logs, indicating underground conditions, are shown on the drawings, this data is for the bidder's information and to reflect the conditions observed at the time and place of drilling. Neither the TOWN nor the PUBLIC WORKS DEPARTMENT shall be held responsible for any variance or deviation from the data shown on the drawings, as encountered during actual construction. The failure or omission of any bidder to do any of the foregoing shall in no way relieve any bidder from any obligation in respect to his bid. The successful bidder will not be allowed any extra compensation in the form of contract price or time by any matter or thing on which he could have fully informed the TOWN of prior to the bidding.

The TOWN may make such investigations as deemed necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the TOWN all such information and data for this purpose as the TOWN may request. The TOWN reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the TOWN that such bidder is qualified to carry out the obligations of the Agreement and to complete the work contemplated therein. The TOWN reserves the right to reject any conditional or qualified bid.

Upon request, a bidder shall provide the TOWN with a current list of references of previous work performed in this field.

The TOWN reserves the right to reject any or all bids and to pass upon the regularity or waive any irregularities of the bidders and to determine the acceptability of the surety offered.

If Bid Schedules are set forth in the Proposals, the bidder must bid on all the Schedules. The bid considered for award of the contract shall be for the low bid for the Base Bid.

The party to whom the contract is awarded ("CONTRACTOR") will be required to execute the Agreement and obtain the Performance Bond, Payment Bond, and Certificates of Insurance within ten (10) calendar days from the date when the Notice of Award is delivered to the bidder. The Notice of Award shall be accompanied by the requisite Agreement. In case of failure of the bidder to execute the Agreement and to furnish said Bonds and Certificates, the TOWN may at its option, consider the bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the TOWN. The TOWN will also be entitled to such other rights as may be granted by law.

The TOWN, within thirty (30) days of receipt of acceptable Performance Bond, Payment Bond Certificates of Insurance and Agreement signed by the party to whom the Agreement was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the TOWN not execute the Agreement within such period, the bidder may, by written notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the TOWN.

The Notice to Proceed shall be issued within ten (10) days of the execution of the Agreement by the TOWN or as otherwise stated in the Special Conditions. Should there be reasons why the

Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the TOWN and the CONTRACTOR. If the Notice to Proceed has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The CONTRACTOR shall commence work not later than the date specified in the Notice to Proceed issued by the TOWN to the CONTRACTOR and shall complete the work as specified therein or as further modified by the Contract Documents. In the event no written Notice to Proceed is issued by the TOWN, the contract time as specified in the contract shall be counted from the first day of actual work on the project. All work shall be prosecuted in an orderly and diligent manner. The CONTRACTOR shall cooperate with, and conform to, the request of the TOWN and PUBLIC WORKS DEPARTMENT to expedite particular portions of the work or to suspend or transfer his operations on any portion of the work where such alteration of the CONTRACTOR's operations is deemed advisable by the TOWN.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout.

Portions of any project may have been termed "Alternates or Contingent" and the OWNER reserves the right to include or remove any or all of these Alternates from the Contract at his sole option or discretion.

### **1.3.1 CONSIDERATION OF PROPOSALS**

After the proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be available to the public. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The right is reserved to reject any or all proposals, to waive technicalities or to advertise for new proposals, if in the judgment of the awarding authority the best interests of the TOWN will be promoted thereby.

### **1.3.2 AWARD OF CONTRACT:**

The award of contract, if it is awarded, will be made within 60 calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The Notice of Award shall thereafter be delivered to the successful bidder.

### **1.3.3 CANCELLATION OF AWARD:**

The TOWN reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the TOWN.



#### **1.3.4 EXECUTION AND APPROVAL OF CONTRACT:**

The Agreement shall be signed by the successful bidder and returned, together with requisite Performance Bond, Payment Bond and Certificates of Insurance to the TOWN. All documents will be executed in duplicate and shall be submitted to the TOWN within 10 calendar days after delivery of the Notice of Award. If the signed Agreement and Bonds are returned by the successful bidder within 10 calendar days after award and if the Agreement is not executed by the TOWN within 30 days from date of award, the bidder shall have the right to withdraw his bid upon written notice, effective upon receipt, without penalty. No Contract shall be considered effective until it has been fully executed by all of the parties thereto.

#### **1.3.5 FAILURE TO EXECUTE CONTRACT:**

Failure to execute the Agreement and file the acceptable bonds within 10 calendar days after the date of award shall be just cause for the cancellation of the award and the forfeiture of the Bid Bond, which shall become the property of the TOWN. The TOWN, in its sole discretion, may elect to waive forfeiture of the Bid Bond only if it is determined that the bidder has made a good faith remedial error and that no damages were sustained by the TOWN as a result of the failure by the successful bidder to execute the Agreement and file acceptable bonds within the time prescribed. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and constructed under contract or otherwise, as the TOWN may decide.

## **1.4 THE CONTRACT: FOLLOWING EXECUTION**

### **1.4.1 MATERIALS:**

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light power, transportation, and other facilities necessary for the execution and completion of the work. The CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials.

### **1.4.2 PROGRESS SCHEDULE:**

The CONTRACTOR shall submit, at such times as may reasonably be requested by the PUBLIC WORKS DEPARTMENT, schedules which shall show the order in which he proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts. The Special Conditions may require that certain phases or parts of the work be completed first or in a certain order. If the CONTRACTOR elects to use PERT or CPM charts, he shall furnish copies of them and all revisions thereto or amendments thereto as the work progresses to the PUBLIC WORKS DEPARTMENT upon request.

### **1.4.3 ASSIGNMENT OF CONTRACT:**

No assignment by the CONTRACTOR of this contract or any part thereof or of the funds to be received thereunder by the CONTRACTOR will be recognized unless such assignment has had the written approval of the TOWN and the surety has been given due notice of such assignment and has furnished written consent thereto. Such written approval by the TOWN shall not relieve the CONTRACTOR of the obligations incurred by him under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in an Agreement with the Town of Johnstown, Colorado, dates **{insert date}**, in favor of all persons, firms, or corporations rendering such services or supplying such materials."

### **1.4.4 SUBCONTRACTING:**

The CONTRACTOR shall provide with their bid the names of all subcontractors proposed for work. The TOWN reserves the right to object to any subcontractor, in which case the CONTRACTOR shall not employ the subcontractor. The CONTRACTOR shall not be allowed to subcontract more than fifty percent (50%) of the total monetary value of the contract without prior approval of the TOWN. The CONTRACTOR shall notify the PUBLIC WORKS DEPARTMENT of each subcontract he awards, giving:

- A. Name, address, and telephone number of the subcontractor;
- B. Branch of work covered;
- C. Total price of subcontract; and
- D. Date of subcontract.

Subcontractors, before commencing work, must file with the TOWN satisfactory certificates in duplicate showing insurance coverage. Failure of the subcontractor to provide such certificates shall not relieve the CONTRACTOR of his obligation to insure and to hold the TOWN harmless. Subcontractors shall also file with the TOWN copies of applicable permits and licenses required to do the subcontracted work.

#### **1.4.5 OTHER CONTRACTS:**

The TOWN may award other contracts for additional work, and the CONTRACTOR shall fully cooperate with such other contractors and carefully fit their own work to that provided under the other contracts as may be directed by the TOWN. The CONTRACTOR shall not commit or permit any act that will interfere with the performance of work by any other contractor.

## 1.5.1 SAMPLE CONTRACT

### 2024 TOWN OF JOHNSTOWN ASPHALT PATCHING PROJECT AGREEMENT

This ASPHALT PATCHING PROJECT Agreement (“Agreement”) is made and entered this \_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the Town of Johnstown, Colorado, a Colorado home-rule municipality (the “Town”), and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”) (collectively, the “Parties”).

#### RECITALS

WHEREAS, the Town seeks to undertake asphalt patching and overlay; and

WHEREAS, Contractor has the requisite skills and experience to perform the work; and

WHEREAS, the Town desires to engage the services of Contractor to perform the work and Contractor desires to perform the work described herein for the Town; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

#### AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. Scope of Work and Standard of Performance.
  - A. Contractor agrees to perform the work set forth in Exhibit A, attached hereto and incorporated herein by reference (“Work”). The scope of the Work, and the terms of this Agreement, shall further include the Special Terms and Conditions set forth in Exhibit B, attached hereto and incorporated herein by reference. The scope of the Work shall not be changed absent written agreement of the Parties. Contractor shall furnish all labor, services, materials, tools, and equipment for the construction and completion of the Work.
  - B. Contractor shall undertake the Work in a thorough and workmanlike manner in every respect and in compliance with this Agreement, all applicable building codes and requirements to which the Work is subject. Contractor shall conform to the standards of quality normally observed by a person practicing in such Contractor’s profession. Contractor shall at all times comply with applicable workplace and occupational safety requirements under state and federal law.
  - C. Contractor has familiarized itself with the nature and the extent of the Work, the physical characteristics of the property and the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the Work.

2. Commencement, Progress and Completion of Work.

- A. Contractor shall commence the Work upon issuance of a Notice to Proceed subsequent to a pre-construction meeting. The Work shall be fully completed, as determined by the Town, in its discretion, no later than ninety (90) Working Days (defined in the Special Terms and Conditions) after issuance of the Notice to Proceed, subject to agreed extensions of time as authorized by the Town in writing.
- B. Timely completion of the Work is essential. Time is of the essence in all respects regarding the undertakings of Contractor under this Agreement. Therefore, Contractor shall carry out the Work with all due diligence.
- C. Among other factors that the Town may consider, the Work shall be considered fully complete when all work has been finished, the Town has performed an inspection and accepted the work in writing, and all claims for payment of labor, materials, or services of any kind used in connection with the Work thereof have been paid or settled by Contractor or its surety.
- D. Until final acceptance of the Work by the Town in writing, Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof. Contractor, at its own expense, shall rebuild, repair, restore, and correct all injuries or damages to any portion of the Work occasioned by any causes before its completion and acceptance. In case of suspension of work from any cause whatsoever, Contractor shall be responsible for all building materials and shall properly store same, if necessary. Contractor shall correct or replace, at its own expense and as required by Town, any building material or portions thereof which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended by this Agreement. Contractor shall be relieved of the responsibilities provided in this section upon final acceptance of the work by Town, except no such relief shall apply to damages or injuries caused by or related to actions of Contractor or its subcontractors.
- E. Upon the Town's written acceptance of the Work, Contractor shall be released from further obligation except as set forth in the surety bond, the guarantee set forth in Section 8 or as otherwise provided in this Agreement.
- F. The Parties recognize that time is of the essence of this Agreement and that the Town will suffer financial loss if the Work is not complete within the time specified in this paragraph plus any extensions thereof allowed. The Parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the Town the sum of [REDACTED] Dollars (\$ [REDACTED]) for each day that expires after the time specified above for final completion until the Work is complete.

3. Payment to Contractor.

- A. Contractor agrees to accept an amount not to exceed [REDACTED] as full payment for the Work during the 2024 calendar year. No funds payable under this Agreement shall become due and payable until the Contractor provides the Town with satisfactory assurances that Contractor has fully settled or paid for all materials and equipment used in or upon the Work and labor done in connection therewith.
  - B. The Town has appropriated the money necessary to fund the Project. No change order or other form of directive shall be issued by the Town requiring additional compensable work to be performed, which causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original contract amount, unless the Town provides written assurance to the Contractor that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Agreement.
  - C. On a monthly basis, Contractor shall submit to the Town for review and approval an application for payment fully completed and signed by Contractor describing the work completed through the last payment and accompanied by such supporting documentation as may be requested by the Town. Materials on hand but not complete in place may be included for payment. The Town shall, within thirty (30) days of receipt of Contractor's completed application for payment, pay the invoice, except that the Town may withhold payment for disputed amounts. The Town shall retain five percent (5%) of the payment.
  - D. Except as otherwise provided herein, upon final completion of the Work, the Town shall, within thirty (30) days, pay to Contractor the retainage accumulated hereunder in addition to any other sums properly due Contractor upon final completion.
  - E. Neither the payment of any progress payment nor the payment of any retained percentage shall relieve the Contractor of any obligations to correct any defective work or material.
  - F. Contractor shall provide Town with written evidence that all persons who have done work or furnished material under this Agreement and are entitled to liens therefor under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the Town is reasonably satisfied that all claims or liens have been satisfied by Contractor.
  - G. Notwithstanding any other provision of this Agreement, the Town may withhold funds if required to do so pursuant to the Colorado Public Works Act, §§38-26-101, *et seq.*, C.R.S., as amended.
4. Term of this Agreement.
- A. Unless either party provides written notice to terminate on or before January 15 of a given calendar year, this Agreement shall extend for four (4) calendar years, through and including the 2027 calendar year. In each calendar year subsequent to the 2024 calendar year, the Parties shall agree upon the scope of the Work to be performed during such calendar year. Contractor shall be entitled to adjust its unit-price compensation for each subsequent calendar year based on increases, if at all, reflected

in the Consumer Price Index for the Denver metropolitan area. The Parties shall memorialize the scope of work and the compensation for such work in each subsequent calendar year by execution of an Annual Amendment to Agreement, the form of which is attached hereto and incorporated herein by reference as Exhibit C.

- B. Notwithstanding the foregoing, pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

5. Insurance.

- A. Contractor shall not commence work under this Agreement until it has presented Certificates of Insurance as required below, confirming it has obtained all insurance and bonds required by this Section 5. Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this Section. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or type.

- B. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor's subcontractors in Contractor's own policy with respect to), the minimum insurance coverages set forth below:

- (1) Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.
- (2) Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.
- (3) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each accident with respect to each of Contractor's owned,

hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

- C. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- D. Certificates of Insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify this project and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- E. Failure on the part of the Contractor to procure or maintain policies as provided herein shall constitute a material breach of contract upon which the Town may immediately terminate the Agreement, or, at its discretion, may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Owner.

## 6. Bonds.

Contractor shall furnish a performance bond and payment bond in an amount at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations under the Agreement, including but not limited to the guarantee period provided in Section 8 below. All bonds shall be in the forms approved by the Town. These bonds shall remain in effect at least until two years after the date of final payment. All bonds shall be in the forms prescribed by the contract documents and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Town.

## 7. Indemnification.



To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

8. Contractor's Guarantee of Work.

Contractor shall guarantee all work under this Agreement as being free of defects for a period of two (2) years from the date of Construction Acceptance by the Town. If any unsatisfactory condition or damage develops within the time of Contractor's guarantee period due to defective or inferior materials or workmanship, or due to the failure to construct the Work in accordance with the Agreement, then the Contractor shall, upon notice by Town, immediately place such guaranteed work in a condition satisfactory to Town. The Town shall have all available remedies to enforce such guarantee. However, the Town shall not have any work performed independently to fulfill contractor's guarantee and require Contractor to pay Town such sums as were expended by the Town for such work, unless the Town has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.

9. Independent Contractor.

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not employees or agents of the Town. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any right on the part of the Town to oversee the actual work of the Contractor or to instruct any individual as to how the work will be performed. Contractor shall have the right to employ such assistance as may be required for the performance of work under this Agreement. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment. THE PARTIES HERETO UNDERSTAND THAT THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE TOWN, AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT.

10. Governmental Immunity.

The Parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as amended, or otherwise available to the Town, its officers, or its employees.

11. Costs and Attorneys' Fees.

In the event of litigation enforcing or interpreting the terms of the within Agreement, and only in the event the Town is the prevailing party, the Town shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

12. No Assignment.

This Agreement shall not be assigned by the Contractor without the prior written approval of the Town. Contractor shall have the right to employ such assistance as may be required for the performance of the Work, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractor's rights and duties hereunder.

13. Governing Law and Venue.

The interpretation and enforcement of this Agreement shall be in accordance with Colorado law. The Parties agree to the jurisdiction and venue of the courts of Weld County, Colorado, in connection with any dispute arising out of or in any matter connected with this Agreement.

14. Dispute Resolution.

In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally.

15. Notice.

Any notice required to be provided under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or sent by a nationally recognized overnight delivery service, by certified mail or by e-mail (on condition of confirmation of receipt), as appropriate, to: (i) if to Contractor, the last-known physical address or email address of Contractor or (ii) if to the Town, to, Matthew LeCerf, Town Manager, 450 S. Parish Avenue, Johnstown, CO 80534, notices@johnstownco.gov.

16. Acceptance of Work.

No act of the Town, or of any representative thereof, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by a final written certificate from the Town. Before the final certificate is issued, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of work done and materials furnished under this Agreement, and that all claims for materials provided or labor performed have been paid or set aside in full.

17. Waiver.

No waiver of any breach of this Agreement by Town or anyone acting on behalf of Town shall be held as a waiver of any other subsequent breach thereof. Any remedies provided herein shall be cumulative.

18. No Presumption.

The Parties acknowledge that each has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

19. Severability.

If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

20. Amendment.

This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

21. No Personal Liability.

In carrying out any of the provisions of this Agreement or in exercising any power or authority thereby, there shall be no personal liability of the Town, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.

22. Colorado Labor Clause.

Contractor agrees, pursuant to Title 8, Article 17, C.R.S., as amended, that Contractor shall employ Colorado labor (as defined below in this paragraph) to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under this Agreement. "Colorado labor" as used in this Agreement means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

23. Equal Opportunity Employer.

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising,

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall be in compliance with the appropriate provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation.

24. Headings.

The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, [Mayor or Town Manager]

**CONTRACTOR**

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

Name:

Title:

STATE OF COLORADO)  
) ss  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by  
\_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**1.5.2 SAMPLE ANNUAL AMENDMENT TO AGREEMENT**

**ANNUAL AMENDMENT TO AGREEMENT  
( \_\_\_\_\_ CALENDAR YEAR)**

This Annual Amendment to Agreement ( \_\_\_\_\_ Calendar Year) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the Town of Johnstown, Colorado, a Colorado home-rule municipality (the “Town”), and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”), and is incorporated into and made a part of that certain ASPHALT PATCHING PROJECT agreement executed by and between the Town and Contractor on or about \_\_\_\_\_, 2024 (“Agreement”). Capitalized terms used herein shall have the meaning set forth in the Agreement.

The Work for the \_\_\_\_\_ calendar year is set forth on Exhibit 1 attached hereto and incorporated herein by reference. The Work described therein shall supersede and replace the Work performed during previous calendar years.

The compensation for the Work during the \_\_\_\_ calendar year shall be \_\_\_\_\_ DOLLARS and \_\_\_\_\_ CENTS (\$\_\_\_\_\_).

Except as expressly provided in this Annual Amendment to Agreement ( \_\_\_\_\_ Calendar Year), the Agreement has not been amended, supplemented or altered in any way by this amendment and the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this Annual Amendment to Agreement ( \_\_\_\_\_ Calendar Year) as of the set forth above.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, [Mayor or Town Manager]

By: \_\_\_\_\_  
Name:  
Title:

**1.5.3 EXHIBIT A SCOPE OF WORK & BID SCHEDULE**

**EXHIBIT A**  
**SCOPE OF WORK**

**HAND PATCHING AREAS OF WORK**

<b>Bid Item 1 - Country Acres</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	23	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	8	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 1 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 2 - Johnstown Center</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	144	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	52	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 2 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 3 - Johnstown Colony</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	26	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	9	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 3 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 4 - Johnstown Heights</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	140	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	51	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 4 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 5 - Pioneer Ridge</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	391	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	142	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 5 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 6 - Rolling Hills</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	117	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	42	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 6 - Total Bid</b>	<b>\$</b>
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### Bid Item 7 - Thompson River Ranch

Item	Unit of Measure	Estimated Bid Qty.	UNIT PRICE BID	EXTENDED VALUE
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	854	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	310	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 7 - Total Bid</b>	<b>\$</b>
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### 6" R&R PATCHING AREAS OF WORK

### Bid Item 8 - Rolling Hills

Item	Unit of Measure	Estimated Bid Qty.	UNIT PRICE BID	EXTENDED VALUE
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	2107	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	765	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 8 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 9 - The Landings</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	5890	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	2137	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 9 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 10 - Knolls</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	200	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	73	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 10 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 11 - Clearview</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Mobilization	LS	1	\$	\$
Remove 6" of existing material	SY	1000	\$	\$
Place 6" two (2) lifts of HMA (S)(75)(PG 64-22)	Ton	363	\$	\$
Traffic Control and door hangers	LS	1	\$	\$

<b>Bid Item 11 - Total Bid</b>	<b>\$</b>
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<b>Bid Item 12 - Subgrade Repair</b>				
<b>Item</b>	<b>Unit of Measure</b>	<b>Estimated Bid Qty.</b>	<b>UNIT PRICE BID</b>	<b>EXTENDED VALUE</b>
Remove unsuitable subgrade material. Place and compact Class 5 aggregate base course.	Ton	250	\$	\$

<b>Bid Item 12 - Total Bid</b>	<b>\$</b>
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## 2" MILL AND OVERLAY AREAS OF WORK

<b>Area 13 - 2" Mill and Overlay</b>				
Blue Areas - Mill 2", place 2" (GR SX 75 PG 64-22 w/fiber). Green Area - Mill 2" and place 2" (GR SX 75 PG 64-22 w/fiber).				
Item	Unit of Measure	Estimated Bid Qty.	UNIT PRICE BID	EXTENDED VALUE
Mobilization	LS	1	\$	\$
Blue Area - Removal of Asphalt Mat (Planing) (2")	SY	6652	\$	\$
Blue Area - Emulsified Asphalt	GAL	185	\$	\$
Blue Area - 2" HMA w/fiber (SX)(75)(PG 64-22)	Ton	833	\$	\$
Green Area - Removal of Asphalt Mat (Planing) (2")	SY	7771	\$	\$
Green Area - Emulsified Asphalt	GAL	386	\$	\$
Green Area - 2" HMA w/fiber (SX)(75)(PG 64-22)	Ton	974	\$	\$
Re-stripe to match existing layout with Epoxy	LS	1	\$	\$
Yellow Area - Traffic Control (Larimer Pkwy full night closure 9PM - 5AM)	LS	1	\$	\$
Green Area - Traffic Control	LS	1	\$	\$
<b>Area 13 - Total Bid</b>				\$

<b>Base Bid Total (Bid Items 1-13)</b>	\$
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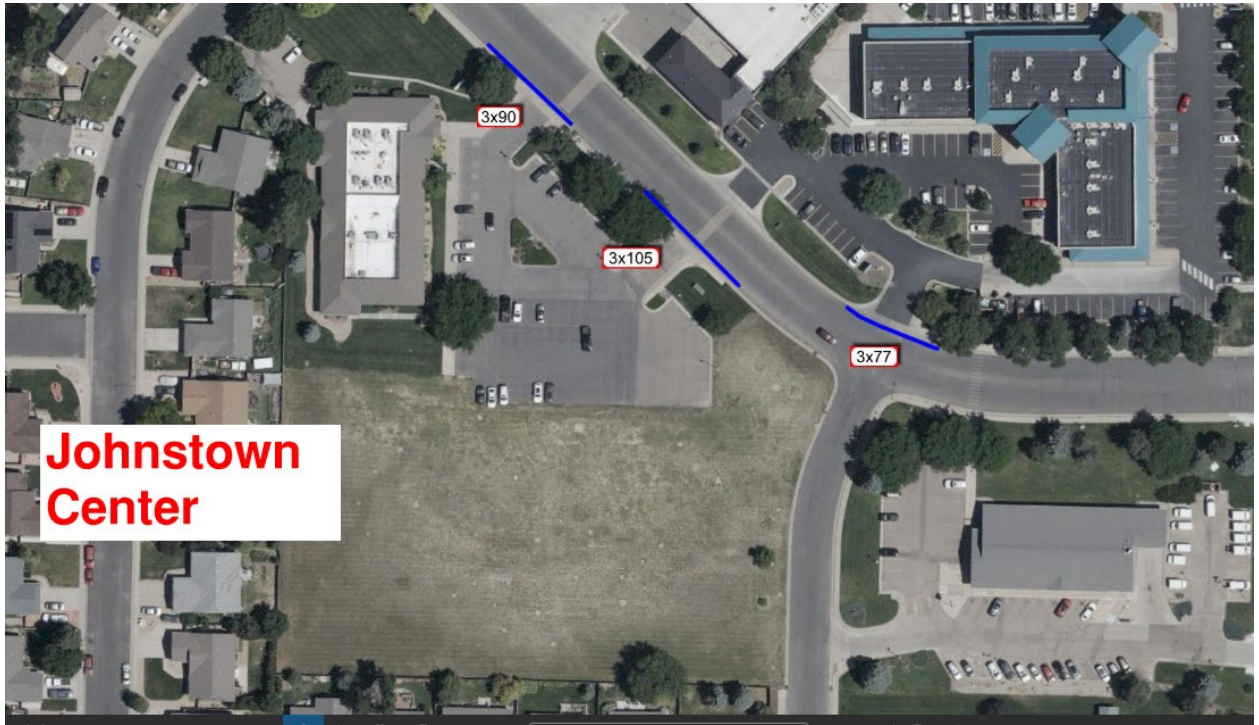
**ADD ALTERNATE BID ITEM**

<b><u>Add Alternate</u> - Bid Item A1 - Library Parking Lot Hand Patching and 2" Mill and Overlay</b>				
Item	Unit of Measure	Estimated Bid Qty.	UNIT PRICE BID	EXTENDED VALUE
Mobilization	LS	1	\$	\$
Remove 8" of existing material	SY	505	\$	\$
Place 8" two (3) lifts of HMA (S)(75)(PG 64-22)	Ton	244	\$	\$
Mill existing asphalt 2" in depth	SY	2805	\$	\$
Tack Coat	Gal	140	\$	\$
Place 2" HMA w/fiber (SX)(75)(PG 64-22)	Ton	339	\$	\$
Restripe to match existing layout	LS	1	\$	\$
Traffic Control	LS	1	\$	\$

<b>Bid Item A1 Total</b>	\$
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**Johnstown  
Center**



**Johnstown  
Colony**

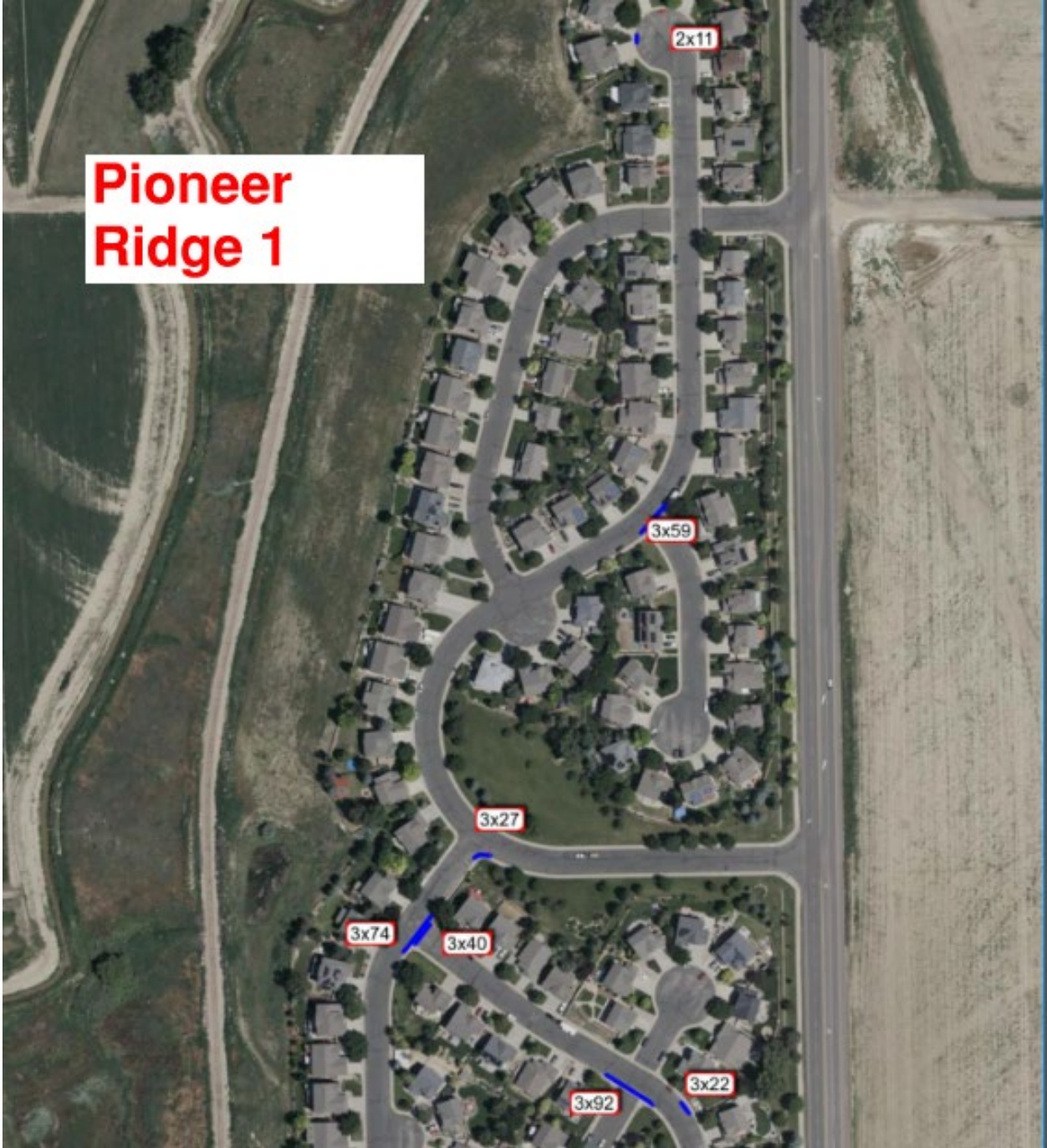


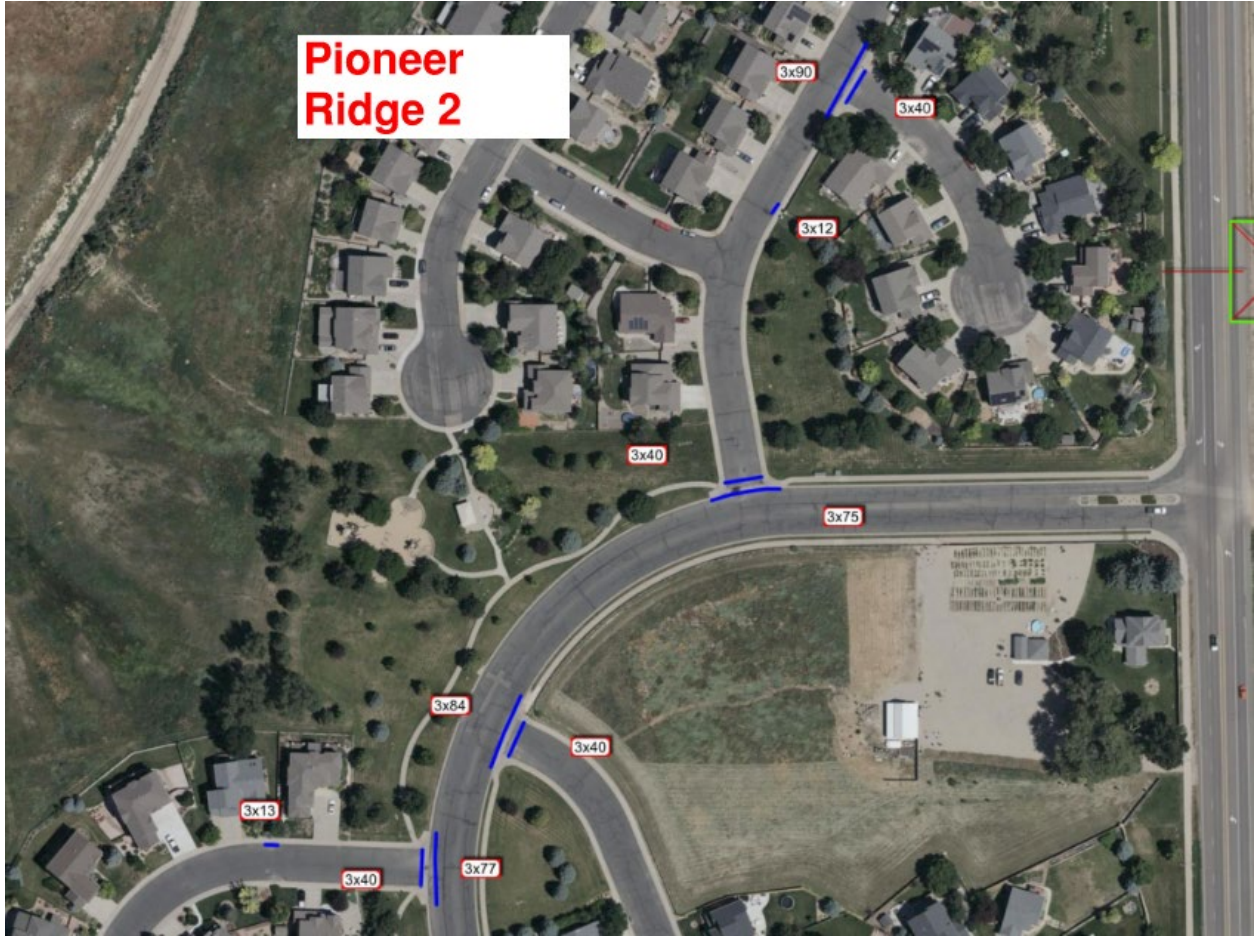




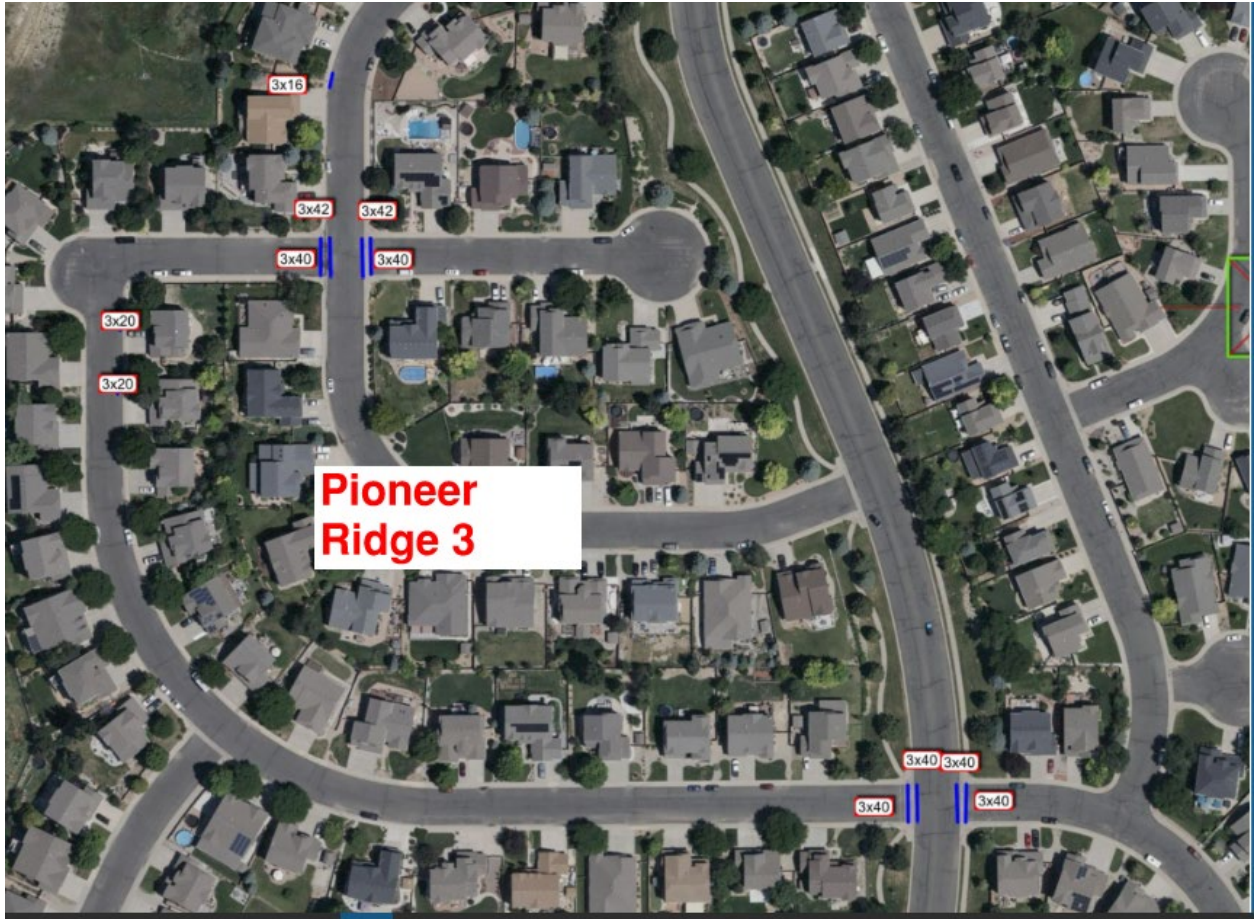


**Pioneer  
Ridge 1**























**ADD ALTERNATE BID ITEM**



## 1.5.4 EXHIBIT B SPECIAL TERMS AND CONDITIONS OF THE WORK

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## **2.1 DEFINITIONS**

(a) The "Contract Documents" shall consist of, among others, the Invitation for Bids, Agreement, Annual Amendment to the Agreement, Bid Proposal, Bid Bond, Performance Bond, Payment Bond, Insurance Requirements, Notice to Proceed, Change Order, Notice of Contractor's Settlement, Final Receipt and Guarantee, Drawings, Specifications, Special and General Conditions, Notice Regarding Illegal Aliens, and including all modifications thereof incorporated in any of the documents before and after the execution of the Contract.

(b) The TOWN and the CONTRACTOR are those named as such in the Agreement. They are treated through the Contract Documents as if each were of singular number and masculine gender.

(c) Wherever in this Contract the word "PUBLIC WORKS DEPARTMENT" is used, it shall be understood as referring to The Public Works Director, Jason Elkins, P.E., or his designated representative.

(d) Any "written notice" served pursuant to the terms of the Agreement shall be deemed to have been duly served if delivered in person or by certified mail to the individual, or to a partner, or to an officer of the corporation for whom it is intended, or any authorized representative thereof.

(e) The term "subcontractor" shall mean anyone, other than the contractor, who furnishes for the Project, under an agreement with the CONTRACTOR, labor, or labor and materials, or labor and equipment, but shall not include any person who furnishes services of a personal nature.

(f) "Work" shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Contract and the carrying out of all duties and obligations imposed by the Contract.

(g) "Extra work" shall mean such additional labor, materials, equipment, and other incidentals as are required to complete the Contract for the purpose for which it was intended, which are shown on the Drawings or called for in the Specifications, or is authorized by the TOWN in addition to that work called for in the Drawings and Specifications.

(h) "Dispute" shall mean lack of agreement between any parties that have any obligations, duties, or responsibilities under the Contract Documents, including but not limited to the Drawings or Specifications.

(i) "Mobilization" shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the establishment of all offices, buildings and other facilities necessary for work on the project; and for all other work and operations which must be performed in order to begin work on the various items on the Project site.

### 2.1.1 ABBREVIATIONS

Wherever the following abbreviations are used in these general conditions, Special Condition, specifications, standard details or on the drawings, they are to be construed the same as the respective expressions represented.

AASHTO	American Association of State Highway and Transportation Officials
AAN	American Association of Nurserymen
AB	Aggregate Base
Aban	Abandon
ABC	Aggregate base course
AC	Asphalt cement or concrete
ACB	Asphalt concrete base
ACI	American Concrete Institute
ACP	Asbestos cement pipe
ACPA	American Concrete Pipe Association
ACWS	Asphalt concrete wearing surface
AGC	Associated General Contractors of America, Inc.
Agg	Aggregate
Ahd	Ahead
AIA	American Institute of Architects
AIEE	American Institute of Electrical Public Works Departments
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APA	American Plywood Association
Approx	Approximate
APWA	American Public Works Association
AR	Aged residue
ASCE	American Society of Civil Public Works Departments
ASME	American Society of Mechanical Public Works Departments
Asph	Asphalt
ASTM	American Society for Testing Materials
Ave	Avenue
AWPA	American Wood Preservers Association
AWSC	American Welding Society Code
AWWA	American Water Works Association
Bbl	Barrel
BC	Beginning of curve
BCR	Beginning of curb return
Beg	Beginning
Bk	Book or Back
Blvd	Boulevard
BM	Bench Mark or Board Measure
Brg	Bearing
BST	Bituminous Surface Treatment
BTB	Bituminous Treated Base
BTU	British Thermal Units
BVC	Beginning of vertical curve
BVCE	Beginning of vertical curve elevation

BVCS	Beginning of vertical curve station
C	Centigrade or Curb
CB	Catch Basin
CBF&C	Catch basin frame & cover
CC or C/C	Center to Center
CCA	Colorado Contractor's Association, Inc.
CDOT	Colorado Department of Transportation
CF	Curb face
Cfs	Cubic Feet per second
CIP	Cast Iron pipe
CIPP	Cast-in-place concrete pipe
CL or C	Centerline
Cm	Centimeter
CMP	Corrugated metal pipe
CO	Clean out
Col	Column
Conc	Concrete
Const	Construct
CP	Concrete pipe (non-reinforced)
CRS	Colorado Revised Statutes
CTB	Cement Treated Base
CY	Cubic Yards
Deg	Degree
DF	Douglas Fir
DG	Decomposed granite
Dia	Diameter
Dim	Dimension
DIP	Ductile Iron Pipe
Div	Division
Dr	Drive
Drwg	Drawing
Dwy	Driveway
Ea	Each
Ease	Easement
E	East
EC	End of curve
ECR	End of curb return
El or Elv	Elevation
EVC	End of vertical curve
EVCE	End of vertical curve elevation
EVCS	End of vertical curve station
Ex or Exist	Existing
F	Fahrenheit
FB	Field Book
F & C	Frame & cover
FH	Fire hydrant
FL or F	Floor line or flow line

Fnd	Found
fps	Feet per second
FS	Finished surface
Ft	Foot or feet
G	Gutter
Ga	Gage
Galv	Galvanized
GL	Ground line
Gpm	Gallons per minute
Gr	Grade
H	High or height
Hdwl	Headwall
Horiz	Horizontal
Hwy	Highway
ID	Improvement District or inside diameter
IE	Invert Elevation
IEEE	Institute of Electrical and Electronic Public Works Departments
In	Inch
Inv	Invert
IP	Iron Pipe
IPS	Iron Pipe Size
Irrig	Irrigation
Jt	Joint
JC	Junction Chamber
Jct	Junction
JS	Junction Structure
L	Length
Lb	Pound
LF	Linear Feet
LH	Lamp hole
Lin	Linear
Long	Longitudinal
Lt	Left
Max	Maximum
Meas	Measured
MH	Manhole
MHF&C	Manhole frame and cover
Min	Minutes or minimum
Misc	Miscellaneous
ML or M	Monument line
Mm	Millimeter
Mon	Monolithic or monument
MTD	Multiple tile duct
MUTCD	Manual of Uniform Traffic Control Devices

N	North
NBS	National Bureau of Standards
NCPI	National Clay Pipe Institute
NE	Northeast
NEC	National Electric Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NPI	Non pay item
NSC	National Safety Council
NSF	National Sanitation Foundation
NW	Northwest
No	Number
OC	On center
OD	Outside diameter
Oz	Ounces
PC	Point of curvature
PCR	Point of curb return
PCC	Point of compound curve or Portland Cement Concrete
PI	Point of intersection or plastic index
PL	Property line
POC	Point of Curve
POS	Point of Spiral
PP	Power pole
ppm	Parts per million
PRC	Point of reverse curve
Prop	Proposed or property
psi	Pounds per square inch
psf	Pounds per square foot
PT or POT	Point of Tangent
P&TP	Power and telephone pole
Pvmt	Pavement
Q	Rate of flow
R	Radius
RC	Reinforced concrete
RCP	Reinforced concrete pipe
Rd	Road
Rdwy	Roadway
Reinf	Reinforced, Reinforcing
Ret Wall	Retaining Wall
RGRCP	Rubber Gasket Reinforced Concrete Pipe
rpm	Revolutions Per Minute
Rt	Right
R/W or Row	Right-of-way
S	South or slope
SAE	Society of Automotive Public Works Departments
San	Sanitary



SC	Spiral to Curve
SCCP	Steel cylinder concrete pipe
SD	Storm drain or Sewer District
SDDTC	Storm Drainage Design and Technical Criteria
Sdl	Saddle
Sec	Seconds
Sect	Section
SE	Southeast
SF	Square feet
Sht	Sheet
Spec	Specifications
SpMH	Special manhole
Sq Ft Yd	Square Foot, Yard
SS	Sanitary sewer
St	Street
Sta	Station
Std	Standard
Str gr	Structural grade
Struct	Structure or structural
SW	Southwest
SY	Square Yard
T	Tangent Distance
Tel	Telephone
Temp	Temporary
TH	Test hole
TP	Telephone pole
Tr	Tract
Trans	Transition
TS	Traffic signal or Tangent to spiral
TSC	Traffic signal conduit
Typ	Typical
UL	Underwriters Laboratories
USC&GS	United States Coast and Geodetic Survey
USGS	United States Geological Survey
V	Velocity of flow
VC	Vertical curve
VCP	Vitrified clay pipe
Vert	Vertical
W	West or width
WI	Wrought iron
WS	Wearing surface
Wt	Weight
Yd	Yard
'	feet or minutes
"	inches or seconds

o	degrees
%	percent
#	number or pound
@	at
/	per
=	equals

### 2.1.2 GENERAL DEFINITIONS AND TERMS:

Whenever in these specifications or in other contract documents the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

**Addendum:** A Supplement to any of the Contract Documents issued, in writing, after advertisement of but prior to the opening of bids for a contract.

**Advertisement:** The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.

**Agency:** The government agency for which the construction is being done, either by permit or contract.

**Agreement:** The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are made a part thereof as provided therein.

**Application for Payment:** The form accepted by the PUBLIC WORKS DEPARTMENT which is to be used by CONTRACTOR in requesting progress or final payment and which is to include such supporting documentation as required by the Contract Documents.

**Award:** The formal action of the governing body in accepting a proposal.

**Backfill:** Material placed in an excavated space to fill such space. For trenches this space will be the area from 1 foot above the top of the pipe or conduit to the existing or proposed finished grade of pavement.

**Base Course:** The upper course of the granular base of a pavement or the lower course of an asphalt concrete pavement structure.

**Bedding:** Is the material placed in the area from the bottom of the trench to 1 foot above the top of the pipe or conduit.

**Bid:** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**Bidder:** Any qualified individual, firm, partnership, corporation or combination thereof, acting directly or through a duly authorized representative who legally submits a proposal for the advertised work.

**Bridge:** A structure, including supports, erected over a depression or an obstruction, as water, highway, or railway, and having a track or passageway for carrying traffic or other

moving loads and having a length measured along the center of roadway of more than 20 feet between undercopings of abutments or extreme ends of openings for multiple boxes.

(Length) The length of a bridge structure is the over-all length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise end to end of the bridge floor; but in no case less than the total clear opening of the structure.

(Roadway Width) The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or in the case of multiple height of curbs, between the bottom of the lower risers.

**Building:** Any structure built for the support, shelter, or enclosure of persons, animals, chattel or movable property.

**Building Code:** A regulation adopted by the governing body establishing minimum standards of construction for the protection of the public health, safety, and welfare in terms of measured performance rather than in terms of rigid specifications of materials and methods.

**Calendar Day:** Every day shown on the calendar.

**Change Order:** A written order issued by the TOWN to the CONTRACTOR to make changes in the work or to perform extra work, and setting forth conditions for payment and/or adjustment in time of completion.

**Completion Time:** The number of calendar days for completion of an act, including authorized time extensions. In case a calendar date of completion is shown in the proposal in lieu of the number of calendar days, the contract shall be completed by that date. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be Sunday or a legal holiday, that shall be excluded.

**Conflicting Utility Line:** An existing utility line, shown or not shown on the drawings, is a conflicting line when any part falls within the trench pay widths as listed or within the dimensions, as shown on the drawings, for appurtenant structures.

**Construction Project:** The erection, installation, remodeling, alteration, of durable facilities upon, under, or over the ground. This shall include, but is not limited to buildings, roadways and utility pipes, lines, poles or other structures.

**Contingent Bid Item:** This is a minor bid item which is likely, but not certain, to occur during the course of work. If the PUBLIC WORKS DEPARTMENT determines that this work is required, the CONTRACTOR will accomplish the work and payment will be made based on the contingent unit bid price included in the proposal.

**Contract:** The written instrument executed by the CONTRACTOR and the Contracting Agency by which the CONTRACTOR is bound to furnish all labor, equipment, and materials and to perform the work specified, and by which the Contracting Agency is obligated to compensate the CONTRACTOR therefore at the prices set forth therein.

The Contract Documents are herewith by reference made a part of the contract as if fully set forth therein. The term "Contract" shall be used interchangeably herein with the term "Agreement."

**Contract Documents:** The Contract Documents are defined in the Agreement and shall consist of, among others, the Invitation for Bids, Information for Bidders, Non-Collusion Statement, Bid Proposal, Bid Bond, Notice of Award, Agreement, Performance Bond, Payment Bond, Insurance Requirements, Notice to Proceed, Change Order, Notice of Contractor's Settlement, Final Receipt and Guarantee, Drawings, Specifications, Special and General Conditions, Notice Regarding Illegal Aliens, and including all modifications thereof incorporated in any of the documents before and after the execution of the Contract.

**Contracting Agency:** The legal entity that has contracted for the performance of the work or for whom the work is being performed.

**Contractor:** The individual, firm, partnership, corporation or combination thereof entering into a contract with the Contracting Agency to perform the advertised work.

**Council:** The Johnstown Town Council that by law constitutes the Legislative Department of the Town organized and existing under and by virtue of the laws of the State of Colorado.

**Culvert:** Any structure not classified as a bridge, which provides an opening under or adjacent to the roadway.

**Days:** Unless otherwise designated, days will be understood to mean calendar days.

**Drawings:** That part of the Contract Documents prepared or approved by the PUBLIC WORKS DEPARTMENT which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other Contractor submittals are not Drawings as so defined.

**Emergency:** Unforeseen occurrences and combinations of circumstances involving the public welfare or the protection of work already done under the Contract Documents, or which endanger life or property and call for immediate action or remedy.

**Public Works Department:** The person or company referred to as PUBLIC WORKS DEPARTMENT in the Contract Documents.

**Equipment:** (Construction)-All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of work.

(Installed)-All material or articles used in equipping a facility as furnishings or apparatus to fulfill a functional design.

**Extra Work:** An item of work not provided for in the contract as awarded but found essential to the satisfactory completion of the contract within its intended scope.

**Field Order:** A written set of emergency instructions to the CONTRACTOR issued only

where the time required for preparation and execution of a formal Change Order would result in a delay or a stoppage of work, or would allow a hazardous condition to exist.

**Flooding:** Flooding will consist of the inundation of the entire lift with water, puddled with poles or bars to insure saturation of the entire lift.

**Foundation:** For buildings or structures, this will be the substructure. For pipe this will be the native material or prepared material on which the pipe rests; normally, this is the bottom grade line of the trench.

**Full Depth Pavement:** An asphalt concrete pavement structure in which the granular base and subbase are replaced by equivalent structural thickness of asphalt concrete.

**General Conditions:** Uniform general specifications adopted as standard specifications by the PUBLIC WORKS DEPARTMENT.

**Holiday:** Holidays recognized by collective bargaining agreements in the State of Colorado are:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

Additional holidays recognizable by the State of Colorado Cities and Counties are:

- Martin Luther King's Birthday
- Presidents Day
- Columbus Day
- Veteran's Day
- General Election Day in even-numbered years

When New Year's Day, Independence Day or Christmas Day fall on Sunday, the following Monday shall be considered a holiday.

Additional legal holidays, when designated by the State Governor or President of the United States, will also be recognized by the State, Town and/or County.

**Inspector:** The PUBLIC WORKS DEPARTMENT's authorized representative assigned to make detailed inspections of contract performance.

**Jetting:** Jetting is the densification of material, using a continuous supply of water, under pressure, transmitted to the material through a rigid pipe of sufficient length to reach the bottom of the lift being densified. In all cases, the entire lift will be completely saturated working from the top to the bottom.

**Laboratory:** The established materials testing laboratory of the Contracting Agency's Public Works Department, or other laboratories acceptable to and/or authorized by the PUBLIC WORKS DEPARTMENT to test materials and work involved in the Contract.

**Liquidated Damages:** A daily charge made against the CONTRACTOR for each

working day, including free time, that any work shall remain uncompleted after elapse of Contract time.

**Major Item:** Any item of work and/or materials having an original contract value that exceeds ten percent of the amount of the original contract.

**Materials:** Any substance specified in the project, equipment and other material used or consumed in the performance of the work.

**Median:** The portion of a divided highway separating the roadways used by traffic going in opposite directions.

**Method of Measurement:** The manner in which a "Pay Item" is measured to conform to the "Pay Unit."

**Non Pay Item:** An item of work for which no separate payment will be made under the proposal, but which must be included as an incidental cost for payment on an associated pay item included in the proposal.

**Notice of Award:** A letter from the TOWN advising the CONTRACTOR that they are the successful Bidder and the Town has accepted their proposal.

**Notice of Construction Acceptance:** The written acknowledgment that construction is complete which starts the warranty period.

**Notice of Final Acceptance:** The written acceptance of Work performed under the Contract, following satisfactory conclusion of the warranty period.

**Notice of Substantial Completion:** The written notice of the date, as certified by the Project Manager, when the Project or a specified part is sufficiently completed, according to the Contract, so the Project or specified part can be used for the intended purposes.

**Notice to Bidders:** The standard forms inviting proposals or bids.

**Notice to Proceed:** A directive issued by the TOWN, authorizing the CONTRACTOR to start the work or improvements required in the Contract.

**Obligee:** One to whom another is obligated. For bonding purposes, the OWNER is the obligee.

**Open Trench:** The excavated area shall be considered as open trench until all the aggregate base course for pavement replacement has been placed and compacted or, if outside of a pavement area, until the excavated area is brought to finish grade or natural grade.

**Owner:** The Town of Johnstown, State of Colorado, acting through its legally constituted officials, officers or employees.

**Pavement:** Any surface of streets, alleys, sidewalks, courts, driveways, etc., consisting of mineral aggregate bound into a rigid or semi-rigid mass by a suitable binder such as,

but not limited to, portland cement or asphalt cement.

**Pavement Structure:** The combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load and distribute it to the roadbed.

**Pay Item:** A detail of work for which individual payments are to be made under the Contract, as specified in the proposal.

**Payment Bond:** The security provided by the CONTRACTOR solely for the protection of claimants, supplying labor and materials to the CONTRACTOR or his Subcontractors.

**Performance Bond:** The security by the CONTRACTOR solely for the protection of the Owner and conditioned upon the faithful performance of the contract in accordance with the contract documents, drawings, specifications and conditions thereof.

**Permit:** The license to do construction in public rights-of-way and/or easements; issued by an Agency to a CONTRACTOR working for another party.

**Plans:** All approved drawings or reproductions thereof pertaining to the work and details therefor, which are made a part of the Project Manual and Contract Documents.

**Plant:** The Contractors' and/or subcontractors' facilities, including but not limited to small tools and mobile equipment, located on and/or offsite, necessary for preparation of materials and prosecution of work for the project.

**Principal:** The individual, firm or corporation primarily liable on an obligation, as distinguished from a surety.

**Profile Grade:** The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

**Project:** A specific coordinated construction or similar undertaking identified by a single project number and bid and awarded as one contract. On occasion two or more projects may be bid and awarded as a single contract.

**Project Manual:** All the integral documents of the contract including but not limited to, IFB, Special Conditions, Project Scope, Specifications and any provided drawings.

**Project Representative:** See definition contained in Article 1.2.2.

**Project Special Conditions:** See definition for Special Conditions.

**Proposal:** The offer of a bidder on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

**Proposal Form:** The approved form on which the Contracting Agency requires bids to be prepared and submitted for the work.

**Proposal Guarantee:** The security furnished with a bid to guarantee that the bidder will enter into the contract if his bid is accepted.

**Proposal Pamphlet:** The book or pamphlet pertaining to a specific project, containing proposal forms, special provisions and other information necessary for and pertinent to the preparation of the proposal or bid.

**Referred Documents:** On all work authorized by the Contracting Agency, any referenced documents in the specifications, such as Bulletins, Standards, Rules, Methods of Analysis or test. Codes and Specifications of other Agencies, Public Works Department Societies or Industrial Associations, refer to the Latest Edition thereof, including Amendments, which are in effect and published at the time of Advertising for Bids or the issuing of a permit for the work, unless otherwise stated.

**Reasonably Close Conformity:** Compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances.

**Right-of-Way:** A general term denoting, land, property or interest therein, usually in a strip, acquired for or devoted to a street, highway, or other public improvement.

**Road:** A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

**Roadside:** A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

**Roadside Development:** Those items necessary to the complete roadway that provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers; such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the roadway.

**Roadway:** The portion of the right-of-way intended primarily for vehicular traffic, and including all appurtenant structures and other features necessary for proper drainage and protection. Where curbs exist, it is that portion of roadway between the faces of the curbs.

**Salvageable Material:** Material that can be saved or salvaged. Unless designated or directed by the PUBLIC WORKS DEPARTMENT or shown on the Drawings, all salvageable material shall remain the property of the CONTRACTOR.

**Sewers:** Conduits and related appurtenances employed to collect and carry off water and waste matter to a suitable point of final discharge.

**Shop Drawings:** Drawings or reproduction of drawings, detailing; fabrication and erection of structural elements, falsework and forming for structures, fabrication of reinforcing steel, installed equipment and installation of systems, or any other supplementary drawings or similar data, which the CONTRACTOR is required to submit for approval.



**Shoulder:** The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**Sidewalk:** That portion of the roadway primarily constructed for the use of pedestrians.

**Special Conditions:** The special conditions, requirements, additions, and/or revisions to the General Conditions and Standard Specifications, applicable to the work, to cover conditions or requirements peculiar to the project under consideration. Special Conditions fall within one of the two following categories and take precedence over the General Conditions.

(a) Project Special Conditions. Special Conditions peculiar to the project and not otherwise thoroughly nor appropriately set forth in the general conditions or standard specifications or drawings.

(b) Standard Special Conditions. Special directions or requirements not otherwise thoroughly or appropriately set forth in the standard specifications, and which are peculiar to a selected group of projects or which are intended for temporary use.

**Specifications:** The descriptions, directions, provisions, and requirement for performing the work as contained in the Contract Documents. Specifications shall also mean "Standard Specifications."

**State:** The State of Colorado.

**Standard Details:** Uniform detail drawings of structures or devices adopted as Standard Details by the PUBLIC WORKS DEPARTMENT.

**Standard:** Uniform general specifications adopted as Standard Specifications by the PUBLIC WORKS DEPARTMENT.

**Storm Drain:** Any conduit and appurtenance intended for the reception and transfer of stormwater.

**Street:** Streets, avenues, alleys, highways, crossings, lanes, intersections, courts, places, and grounds now open or dedicated or hereafter opened or dedicated to public use and public ways.

**Structures:** Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, sewers, service pipes, underdrains, foundation drains, fences, swimming pools, and other features which may be encountered in the work and not otherwise classed herein.

**Sub-base:** The lower course of the base of a roadway, immediately above the sub-grade.

**Subcontractors:** Those having direct contracts with the CONTRACTOR and those who furnish material worked into a special design according to the Drawings and

Specifications for the work, but not those who merely furnish material not so worked.

**Sub-grade:** The supporting structures on which the pavement and its special undercourses rest.

**Substructure:** All of that part of the structure or building below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

**Superintendent:** The Contractor's authorized representative in responsible charge of the work.

**Superstructure:** The entire structure or building except the substructure.

**Supplemental Specifications:** Additions and revisions to the Standard Specifications that are adopted subsequent to issuance of the printed Project Manual.

**Surety:** The individual, firm or corporation, bound with and for the CONTRACTOR for the acceptable performance, execution, and completion of the work, and for the satisfaction of all obligations incurred.

**Surface Course:** The finish or wearing course of an asphalt concrete pavement structure.

**Title or Headings:** The titles or headings or the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**Town:** A municipal corporation, organized and existing under and by virtue of the laws of the State of Colorado.

**Town Clerk:** The duly authorized person who performs the duties of clerk for the Contracting Agency.

**Traveled Way:** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

**Utility:** Pipe lines, conduits, ducts, transmission lines, overhead or underground wires, railroads, storm drains, sanitary sewers, irrigation facilities, street lighting traffic signals, and fire alarm systems, and appurtenances of public utilities and those of private industry, businesses or individuals solely for their own use or use of their customers which are operated or maintained in, on, under, over or across public right-of-way or public or private easement.

**Waterworks (Water Supply System):** The reservoirs, pipelines, wells, pumping equipment, purification works, mains, service pipes, and all related appliances and appurtenances utilized in the procurement, transportation and delivery of an adequate, safe, and palatable water supply for the Contracting Agency.

**Work:** Any of all of the improvements mentioned and authorized to be made in the Contract Documents, and the construction, demolition, reconstruction, and repair of all or

any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

**Working Day:** A calendar day, exclusive of Saturdays, Sundays and Contracting Agency recognized legal holidays, on which weather and other conditions not under the control of the CONTRACTOR will permit construction operations to proceed for the major part of the day with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

## **2.2 GENERAL CONTRACT REQUIREMENTS**

### **2.2.1 FAMILIARITY WITH WORK**

The TOWN has endeavored to ascertain all pertinent information regarding site conditions, and subsurface conditions, and has, to the best of his ability, furnished all such information to the CONTRACTOR. Such information is given, however, as being the best factual information available to the TOWN, but is advisory only. The CONTRACTOR, by careful examination, shall satisfy himself as to the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters that can in any way affect the work under this Contract.

Bidder shall examine the site of the proposed work and all documents pertaining to the work. It is mutually agreed that the submission of a proposal shall be considered prima facie evidence that the bidder has made such examination and is familiar with the character, quality and quantity of the work to be performed and material to be furnished.

Logs of test hole, ground water levels, and any accompanying soil reports as furnished by the Contracting Agency are furnished for general information only. The field condition so set forth shall not constitute a representation or warranty, expressed or implied, that such conditions are actually existent. Bidders shall make their own investigations and form their own estimates of the site conditions. After the submission of the proposal, no complaint or claim that there was any misunderstanding as to the quantities, conditions or nature of the work will be entertained.

### **2.2.2 CHANGED CONDITIONS**

The CONTRACTOR shall immediately, and before such conditions are disturbed, except in the event of any emergency, notify the TOWN in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract; or (2), previously unknown physical or other conditions at the site, of an unusual nature, not generally recognized as inherent in work of the character provided for in the Contract, which could not have reasonably been discovered prior to execution of the Contract. The PUBLIC WORKS DEPARTMENT shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an adjustment shall be made pursuant to Article 2.6.1, if appropriate, and the Contract modified in writing accordingly. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given notice as above required, provided that the PUBLIC WORKS DEPARTMENT may, if he determines the facts so justify, consider and adjust any such claims assessed before the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Article 2.2.33 hereof.

### **2.2.3 ORDER OF COMPLETION**

The CONTRACTOR shall submit, at such times as may reasonably be requested by the PUBLIC WORKS DEPARTMENT, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts. The Special Conditions, Specifications or Drawings may require that certain phases or parts of the work be completed first or in a certain order. If the CONTRACTOR elects to use PERT or CPM charts, he shall furnish copies of them to the PUBLIC WORKS DEPARTMENT upon request.

### **2.2.4 DESIGN AND SPECIFICATIONS**

It is agreed that the TOWN shall be responsible for the adequacy of the Specifications and Drawings. The TOWN, through the PUBLIC WORKS DEPARTMENT, shall furnish the Specifications and Drawings, which adequately represent the requirements of the work to be performed under the Contract. All such instructions shall be consistent with the Contract Documents and shall be true developments thereof. Specifications and Drawings that adequately represent the work to be done shall be furnished prior to the time of entering into the Contract. The PUBLIC WORKS DEPARTMENT may, during the life of the Contract, and in accordance with Article 2.2.15, issue additional instructions, by means of drawings or other media, necessary to illustrate changes in the work.

### **2.2.5 SURVEYS**

The TOWN has not provided bench marks adjacent to the work. From the information provided by the TOWN, the CONTRACTOR shall develop and make all detail surveys needed for construction, such as slope stakes, batter boards, stakes for pile locations, and other working points, lines, and elevations. The CONTRACTOR shall be responsible for any mistakes made in his detail surveys.

The CONTRACTOR shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their necessary loss or disturbance.

## **2.2.6 CLAIMS**

If the CONTRACTOR claims that any instructions by drawings or otherwise, issued after the date of the Contract, involve extra cost under the Contract, he shall give the PUBLIC WORKS DEPARTMENT written notice thereof within ten (10) days after the receipt of such instruction, and in any event before proceeding to execute the work, except for emergency work endangering life or property, and the procedure shall than be as provided for changes in the work, as set forth herein. No such claim shall be valid unless so made.

## **2.2.7 EXECUTION AND HIERARCHY OF DOCUMENTS**

The Contract Documents are complimentary and what is called for by any one of such documents shall be as binding as if called for by all. In case of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control from most compelling to least compelling:

Agreement  
Special Conditions  
Drawings & Specifications (the more stringent requirement controls)  
Design Standards & Specifications  
Figures govern over scaled dimensions

Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

## **2.2.8 MATERIALS AND APPLIANCES**

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of work. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

## **2.2.9 EMPLOYEES**

The CONTRACTOR shall, at all times, enforce strict discipline and good order among his employees, and shall seek to avoid employing, for the Contract, any unfit person or anyone not skilled in the work assigned to him.

The CONTRACTOR shall provide adequate sanitary facilities.

Employees of the CONTRACTOR and/or any subcontractor working on the project shall not be considered as employees of the TOWN, nor shall they be entitled to any of the benefits provided to the TOWN's employees.

## **2.2.10 ROYALTIES AND PATENTS**

The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement for any patent rights and indemnify and save the TOWN harmless from loss on accounts thereof, except that the TOWN shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the TOWN has notified the CONTRACTOR prior to the signing of the Contract that the particular process, design, or product is patented or is believed to be patented.

### **2.2.11 PERMITS, LICENSES AND REGULATIONS**

Permits and licenses of a temporary nature, necessary for the prosecution of the work, shall be secured and paid for by the CONTRACTOR. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the TOWN, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he shall promptly notify the PUBLIC WORKS DEPARTMENT in writing, and any necessary changes shall be adjusted in the Contract for changes in the work.

### **2.2.12 INSPECTION OF WORK**

All materials and equipment used in the construction of the project shall be subject to adequate testing in accordance with generally accepted standards as required by the Contract Documents.

The TOWN shall provide sufficient competent personnel, working under qualified supervision for the inspection of the work, while such work is in progress, to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications and Drawings. The inspection of the Contract will be as it relates to the compliance with the Specifications and Drawings, quality of workmanship, and material. Notwithstanding such inspection, the CONTRACTOR will be held responsible for the acceptability of the work.

The PUBLIC WORKS DEPARTMENT and his representatives shall at all times have access to work whenever it is in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the Specifications, the PUBLIC WORKS DEPARTMENT's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the CONTRACTOR shall give the PUBLIC WORKS DEPARTMENT timely notice to its readiness for inspection, and if the inspection is by an authority other than the PUBLIC WORKS DEPARTMENT, a date shall be fixed for such an inspection. Inspections by the PUBLIC WORKS DEPARTMENT shall be promptly made, and where applicable, at the source of supply. Any work required by the PUBLIC WORKS DEPARTMENT to be uncovered for examination shall be properly restored at the CONTRACTOR's expense unless the PUBLIC WORKS DEPARTMENT has unreasonably delayed inspection.

Re-examination of any work may be ordered by the PUBLIC WORKS DEPARTMENT, and if so ordered, the work must be uncovered by the CONTRACTOR. If such work is found to be in accordance with the Contract Documents, the TOWN shall pay the cost of re-examination. If such work is not in accordance with the Contract Document, the CONTRACTOR shall pay such cost.

### **2.2.13 SUPERINTENDENTS**

The CONTRACTOR shall keep on his work at all times during its progress, competent superintendents and/or responsible assistants. The superintendent shall represent the CONTRACTOR and all directions given to him shall immediately be confirmed in writing to the CONTRACTOR. Superintendent shall be named in writing by CONTRACTOR at the beginning of the work.

#### **2.2.14 PRECONTRACT EXAMINATION AND DISCOVERY OF DISCREPANCIES DURING WORK**

Before submitting his proposal, the CONTRACTOR will examine all construction plans and the entire and complete Specifications and Drawings. The CONTRACTOR will become well and fully informed as to the materials and the character of the work required, the relationship of all of the particular parts of the work, and he will visit and inspect the site, observing and examining the conditions existing.

After the execution of the Contract, no consideration will be granted for any misunderstanding of the materials to be furnished or the work to be done, it being mutually understood that the tender of the proposal carried with it an agreement to this end and all other conditions mentioned in the Contract Documents, the Specifications and Drawings, and implied a full and complete understanding of them and all construction plans, drawings, notes, indications, and requirements.

Should anything be omitted from the construction plans or specifications necessary to the proper completion of the work herein described, it shall be the duty of the CONTRACTOR to so notify the TOWN before signing the Contract, and in the event of failure of the CONTRACTOR to give such notice, he shall make good any damage or defect in his work caused thereby without extra charge. No allowance will be made for lack of full knowledge of all conditions, except such underground conditions as are determined after commencement of the work and were unknown to the CONTRACTOR as more fully described in Article 2.2.2.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the Specifications and Drawings and the physical conditions of the locality, or any errors or omissions in the layout as given by survey points and instruction, he shall immediately inform the PUBLIC WORKS DEPARTMENT, in writing, and the PUBLIC WORKS DEPARTMENT shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTOR's risk, except in the event of an emergency.

#### **2.2.15 CHANGES IN THE WORK**

At any time by written order, the TOWN may make changes in the Specifications, Drawings or scheduling of the Contract. All such work shall be executed under the time constraints of the original Contract dates except that any claim for extension of time caused thereby shall be allowed and adjusted at the time of ordering such change or at such time as it can be ascertained.

In giving instructions, the PUBLIC WORKS DEPARTMENT shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work. Except in an emergency endangering life and property, no claim for an addition to the Contract sum shall be valid unless the additional work was so ordered by the PUBLIC WORKS DEPARTMENT.

The CONTRACTOR shall proceed with the work as changed and the value of any such work or change shall be determined as provided for in the Agreement.

The TOWN may at any time, as the need arises, order changes within the scope of the work without invalidating the Agreement. If such changes increase or decrease the amount due

under the Contract Documents, or in the time required for performance of the work, the CONTRACTOR shall perform the same at the unit prices or lump sum indicated in the bid, as approved by the PUBLIC WORKS DEPARTMENT.

#### **2.2.16 EXTENSION OF TIME**

a. Extension of time stipulated in the Contract for completion of the work will be made when changes in the work occur, as provided in Article 2.2.15; when the work is suspended as provided in Article 2.2.17; and when the work of the CONTRACTOR is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the CONTRACTOR, his subcontractors or suppliers, and which were not the result of their fault or negligence.

Extension of time for completion shall also be allowed for any delays in the progress of the work that, in the opinion of the PUBLIC WORKS DEPARTMENT, entitles the CONTRACTOR to an extension of time.

b. The CONTRACTOR shall notify the PUBLIC WORKS DEPARTMENT promptly of any occurrence or condition which, in the CONTRACTOR's opinion, entitles him to an extension of time. Such notice shall be in writing and shall be submitted in ample time to permit full investigation and evaluation of the CONTRACTOR's claim. Failure to provide such prompt and ample notice shall constitute a waiver by the CONTRACTOR of any claim.

#### **2.2.17 SUSPENSION OF WORK**

The TOWN may at anytime suspend the work, or any part thereof, by giving three (3) days' notice to the CONTRACTOR in writing.

#### **2.2.18 THE TOWN'S RIGHT TO TERMINATE CONTRACT**

If the CONTRACTOR should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed as a result of his insolvency, or if he should persistently or repeatedly refuse or should fail, except for cases in which extensions of time are provided, to supply enough properly-skilled workmen or materials, or if he should fail to make payments to subcontractors or for materials or labor so as to affect the progress of the work or persistently be guilty of a substantial violation of the Contract, then the TOWN, upon written notice from the PUBLIC WORKS DEPARTMENT that sufficient cause exists to justify such action and without prejudice to any other right or remedy, and after giving the CONTRACTOR and his Surety seven (7) days' written notice, terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the TOWN, and finish the work by whatever method the PUBLIC WORKS DEPARTMENT may be deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the TOWN. The expense incurred by the TOWN as herein provided, and the damage incurred through the CONTRACTOR's default, shall be certified by the PUBLIC WORKS DEPARTMENT.

Where the Contract has been terminated by the TOWN, said termination shall not affect or terminate any of the rights of the TOWN then existing or which may thereafter accrue because



of such default as against the CONTRACTOR or his Surety. Any retention or payment of moneys by the TOWN due to the CONTRACTOR under the terms of the Contract, shall not release the CONTRACTOR or his Surety from liability for the CONTRACTOR's default.

#### **2.2.19 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court, or other public authority, for a period of more than three (3) months, through no act or fault of the CONTRACTOR, then the CONTRACTOR may, upon seven (7) days written notice to the PUBLIC WORKS DEPARTMENT, stop work or terminate this Contract and recover from the TOWN payment for all work executed, plus any loss sustained upon any plant or materials, plus reasonable profit and damages.

#### **2.2.20 CANCELLATION OF CONTRACT**

Failure of the CONTRACTOR to comply with any of the requirements of the Contract and the Specifications and Drawings may be considered as evidence of the inability on the part of the CONTRACTOR to maintain the quality and service standards deemed necessary, and shall be sufficient cause for the cancellation of the Agreement and the initiating of legal action against the Performance Bond of the CONTRACTOR.

#### **2.2.21 CORRECTION OF WORK**

The CONTRACTOR shall promptly remove from the premises all materials and work condemned by the PUBLIC WORKS DEPARTMENT as failing to meet contract requirements, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute the work in accordance with the Contract and without expense to the TOWN and shall bear the expense of making good all the work, including the work of other contractors that is destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the CONTRACTOR's expense. If the CONTRACTOR does not take action to remove the condemned work and materials within ten (10) days after written notice, the TOWN may remove them and store the material at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such removal and storage within ten (10) days thereafter, the TOWN may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay the CONTRACTOR any net proceeds thereof, after deducting all costs and expenses that should have been borne by the CONTRACTOR.

#### **2.2.22 REMOVAL OF EQUIPMENT**

In the case of termination of this Contract before completion for whatever cause, the CONTRACTOR, if notified to do so by the TOWN, shall promptly remove any part or all of his equipment and supplies from the property of the TOWN, failing which, the TOWN shall have the right to exercise control over and to remove such equipment and supplies at the expense of, and without recourse, by the CONTRACTOR.

#### **2.2.23 RESPONSIBILITY FOR WORK**

The CONTRACTOR assumes full responsibility for the work. Until final acceptance, the CONTRACTOR shall be responsible for damage to or destruction of the work, except for any part covered by partial acceptance as set forth in Article 2.2.24 and except such damage or destruction that is caused by the negligent or willful acts of the TOWN.

#### **2.2.24 PARTIAL COMPLETION AND ACCEPTANCE**

If at any time prior to the issuance of the final certificate, referred to in Article 2.2.34 hereinafter, any portion of the permanent construction has been satisfactorily completed to the PUBLIC WORKS DEPARTMENT's satisfaction, and if the PUBLIC WORKS DEPARTMENT determines that such portion of the permanent construction is not required for the operations of the CONTRACTOR, but is needed by the TOWN, the PUBLIC WORKS DEPARTMENT shall issue to the CONTRACTOR a Certificate of Partial Completion, and thereupon or at any time thereafter, the TOWN may take over and use the portion of the permanent construction described in such certificate.

The issuance of a Certificate of Partial Completion shall not be construed to constitute an extension of the CONTRACTOR's time to complete the portion of the permanent construction to which it relates, if he fails to complete it in accordance with the terms of this Contract. The issuance of such a certificate shall not operate to release the CONTRACTOR or his Sureties from any obligations under this Contract or the Performance Bond.

If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to extra compensation, or extension of time, or both, as the PUBLIC WORKS DEPARTMENT may determine, unless otherwise provided.

#### **2.2.25 PAYMENT WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK**

As a result of subsequently discovered evidence, the TOWN may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect the TOWN from loss occasioned by:

- (a) Defective work not remedied by the CONTRACTOR;
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the CONTRACTOR for work done on the project;
- (c) Failure of the CONTRACTOR to make payments properly to subcontractors or for material or labor; or
- (d) Damage by the CONTRACTOR to subcontractors or to another contractor.

When the above grounds are removed, or the CONTRACTOR provides Surety Bond satisfactory to the TOWN that will protect the TOWN in the amount withheld, payment shall be made for amounts withheld because of them. No moneys may be withheld under (b) and (c) if a Payment Bond is included in the Contract.

Notwithstanding the foregoing, the TOWN may withhold funds if required to do so pursuant to the Colorado Public Works Act, §38-26-101, *et seq.*

#### **2.2.31 PUBLIC WORKS DEPARTMENT'S STATUS**

The PUBLIC WORKS DEPARTMENT shall perform technical inspection of the work. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. He shall also have authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

### **2.2.32 PUBLIC WORKS DEPARTMENT'S DECISIONS**

The PUBLIC WORKS DEPARTMENT shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the CONTRACTOR and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

### **2.2.33 DISPUTE RESOLUTION**

Except as otherwise provided in Articles 2.2.18 and 2.2.19, the following provisions shall apply to a dispute, controversy or claim:

**A. Notice and Attempt to Cure:** In the event of a dispute, controversy or claim, the non-breaching party agrees to provide written notice to the breaching party. Such written notice shall specifically state the reason of the dispute and appropriate corrective action, if known. The breaching party shall have five (5) days to cure the default, unless the PUBLIC WORKS DEPARTMENT agrees in writing that additional time is warranted.

**B. Mediation:** If the default is not resolved during the cure period, and prior to the commencement of arbitration, the non-breaching party shall first submit the matter to mediation conducted by a neutral mediator. The parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having at least five (5) years' experience in construction-related matters. If the parties are unable to agree upon a mediator, either party may apply to the American Arbitration Association in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the parties.

**C. Arbitration:** If the dispute is not resolved by the mediation process within thirty (30) days after the appointment and installation of a mediator, the non-breaching party may commence arbitration. The dispute, controversy or claim shall then be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

### **2.2.34 ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice that the work is substantially complete or ready for final inspection and acceptance, the PUBLIC WORKS DEPARTMENT will promptly make such inspection and when he finds the work acceptable under the Contract and the Contract fully performed or substantially completed, he shall promptly issue a certificate, over his own signature, stating that the work required by this Contract has been substantially completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the CONTRACTOR, including the retained percentage is due and payable, unless a retention based on the PUBLIC WORKS DEPARTMENT's estimate of the fair value of the claims against the CONTRACTOR is warranted or a retention for the cost of completing the uncompleted or unsatisfactory items of work with specified amounts for each incomplete or defective item of work is warranted. No final payment shall be made by the TOWN unless and until the CONTRACTOR has certified in writing to the PUBLIC WORKS DEPARTMENT that all payroll, material bills, and other indebtedness connected with the work have been paid or otherwise satisfied.

The making and acceptance of the final payment shall constitute a waiver of all claims by the TOWN, other than those arising from unsettled claims or liens, from faulty work appearing within the two-year guarantee period, from the requirements of the Specifications and Drawings, or from manufacturer guarantees. It shall also constitute a waiver of all claims by the

CONTRACTOR, except those previously made and still unsettled.

If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR and the PUBLIC WORKS DEPARTMENT so certifies, the TOWN shall, upon certificate of the PUBLIC WORKS DEPARTMENT, and without terminating the Contract, make payment of balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the project to bind the subcontractors to the CONTRACTOR by the terms of the Contract Documents, and to give the CONTRACTOR the same power as regard to terminating any subcontract that the TOWN may exercise over the CONTRACTOR under any provision of the Contract Documents.

If the TOWN fails to make payment as herein provided, there shall be added to each payment daily interest at the rate of six percent (6%) per annum commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the CONTRACTOR.

Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the TOWN.

Subcontracts, or transfer of Contract, shall not release the CONTRACTOR of his liability under the Contract and the Payment and Performance Bonds.

Notwithstanding the foregoing, the TOWN may withhold funds if required to do so pursuant to the Colorado Public Works Act, §38-26-101, *et seq.*

### **2.2.35 LIQUIDATED DAMAGES**

The CONTRACTOR recognizes and agrees that the date of the commencement and completion of the work are essential conditions of the Contract Documents, and the work shall be commenced on the date specified in the Notice to Proceed and shall proceed at such rate of progress as to insure full completion as provided in the Notice to Proceed, unless otherwise extended as provided herein. The CONTRACTOR further recognizes and agrees that the allotted time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed.

In the event the CONTRACTOR fails to complete the work within the allotted time limit, the following liquidated damages shall be applied:

Original Contract Amount (\$)		Liquidated Damages
From More Than	To And Including	per Calendar Day (\$)
0	500,000	800
500,000	1,000,000	1,600
1,000,000	2,000,000	2,200
2,000,000	5,000,000	3,200
5,000,000	15,000,000	5,400
15,000,000	-----	9,800

These rates will be assessed per calendar day for each day which the CONTRACTOR fails to finish the work in excess of the time period allotted.

The parties agree that the liquidated damages, as stated herein, are not a penalty and are reasonable, given the expected harm from a delay in completion, the difficulty of proving actual loss, and the inadequacy of any other remedy.

Notwithstanding the foregoing, the CONTRACTOR shall not be charged with liquidated damages when the delay in completion of the work is due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not limited to, unforeseen conditions, acts of God, or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather. In such case, the CONTRACTOR shall promptly provide written notice of the delay to the Town.

**2.2.36 TAXES**

Except as may be otherwise provided in this Contract, the contract price is to include all applicable taxes, but does not include any tax from which the TOWN and the Contractor are exempt. Upon request by the CONTRACTOR, the TOWN shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price, pursuant to this provision.

**2.3 LEGAL RELATIONS & RESPONSIBILITIES TO PUBLIC**

**2.3.1 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

Laws and Regulations: The CONTRACTOR shall keep himself fully informed of all TOWN and county ordinances and regulations, and state and federal laws which in any manner affect the work herein specified. He shall at all times observe and comply with said ordinances, regulations, or laws.

**2.3.2 PROJECT SAFETY**

The CONTRACTOR is solely responsible for and shall take reasonable precautions in the performance of the work under this Contract to protect all persons from hazards to life and property. The CONTRACTOR shall comply with all health, safety and fire protection regulations and requirements.

### **2.3.3 PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY**

The CONTRACTOR shall provide and maintain all necessary watchmen, barricades, warning lights, and signs in accordance with the Manual of Uniform Traffic Control Devices, and take all reasonable precautions for the protection and safety of the public. He shall continuously maintain reasonable protection of all work from damage, and shall take all reasonable precautions to protect the TOWN's property from injury or loss arising in connection with this Contract. Streets and highways shall be kept free of dirt and litter from CONTRACTOR's handling operations. The CONTRACTOR shall take reasonable precautions to protect private property adjacent to the project from such nuisances as dust and dirt, rock, and excessive noise. He shall make good any damage, injury or loss to his work and to the property owner resulting from lack of reasonable protective precautions, except such as may be due to errors in the Contract Documents, or caused by agents of adjacent private and public property, as provided by law and the Contract Documents.

## **2.5 MEASUREMENT & PAYMENT**

### **2.5.1 PAYMENT**

Unless payment is otherwise withheld as provided herein, partial payment under the Contract shall be made at the request of the CONTRACTOR once each month, based upon partial estimates to be furnished by the CONTRACTOR and approved by the PUBLIC WORKS DEPARTMENT or inspector. In making such partial payment, there shall be retained five percent (5%) of the estimated amounts until final completion and acceptance of all work covered by the Contract.

In preparing estimates for partial payments, the material delivered on the site and preparatory work done may be taken into consideration.

Payments for work under the subcontracts of the CONTRACTOR shall be subject to the above conditions.

### **2.5.2 PAY QUANTITIES**

The CONTRACTOR shall be paid on a unit price basis as indicated by the proposal for the actual quantities installed.

### **MEASUREMENT AND PAYMENT Site Work MOBILIZATION**

This item shall be paid for on a lump sum (LS) basis and shall include the cost of furnishing at the job site all equipment, facilities, materials, personnel, and supplies required to complete the construction. The cost of Mobilization shall not constitute more than 5% of the total contract amount.

The mobilization will be measured by the LS. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

### **MEASUREMENT AND PAYMENT Site Work REMOVAL OF EXISTING MATERIAL ASPHALT MAT**

Payment for Removal of Existing Material Asphalt Mat will be total compensation for all labor, materials, tools, equipment, and incidentals required to remove the asphalt as designated in the scope of work and bid schedule, and as directed by the Town Project Manager.

Asphalt depth verification will not be measured and paid for separately; but will be included in the work.

Methods to prevent debris from entering the storm sewer, methods to protect the traveling public, and methods to prevent airborne debris will not be paid for separately; but will be included in the work.

Removal of Asphalt Mat will be measured by the actual quantity completed to the required depth and accepted, by the square yard (SY). The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work ASPHALT HAND PATCHING**

Hot Mix Asphalt (Hand Patching) consists of those quantities required for the replacement of unstable corrugated areas in the existing pavement, and areas removed for concrete repair forms. These quantities will be restricted to small areas which require hand placement methods and where conventional paving equipment cannot be utilized.

Areas to be patched shall be excavated and squared to a neat line, leaving the sides of the excavation vertical. Prior to placement of the patch the exposed sides of the existing pavement shall be thoroughly coated with Emulsified Asphalt (slow-setting). Hot mix asphalt shall then be placed and compacted in succeeding layers not to exceed 3 inches in depth.

Preparation, and tack coat of areas to be patched will not be measured and paid for separately but shall be included in the work.

The Hand Patching will be measured by the Ton. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work ASPHALT PATCHING**

Hot Mix Asphalt (Patching) consists of those quantities required for the replacement of unstable corrugated areas in the existing pavement. Areas to be patched shall be excavated and squared to a neat line, leaving the sides of the excavation vertical. Before placement of the patch, subgrade will be approved by Town Project Manager, and the exposed sides of the existing pavement shall be thoroughly coated with emulsified asphalt (slow-setting). Preparation, and tack coat of areas to be patched will not be measured and paid for separately but shall be included in the work. Hot mix asphalt shall then be placed and compacted in succeeding layers not to exceed 3 inches in depth. The Asphalt Patching will be measured by the Ton. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work SUBGRADE REPAIR**

Identified subgrade that would be detrimental if left in place in its existing condition. This work consists of the removal of unsuitable subgrade material and haul offsite. Place and compact aggregate base course as directed by the Town Project Manager. If the required compacted depth of the aggregate base course exceeds 6 inches, it shall be constructed in two or more layers of approximately equal thickness. The maximum compacted thickness of any one layer shall not exceed 6 inches. Water will not be measured and paid for separately but shall be included in the work. Compaction will not be measured and paid for separately but shall be included in the work.

The aggregate base course will be measured by the ton. The accepted quantities will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work ASPHALT MILLING**

This item shall be paid for on a square yard (SY) basis as indicated in the Bid Schedule and shall include all equipment, materials, and labor, for the removal of asphalt mat during milling operations. Extents of milling operations shall be identified and marked by the Town Project

Manager prior to any work. All mill operations shall achieve a roadway crown of a 1% minimum with minimum of 2-inches at edge of asphalt.

The asphalt milling will be measured by the SY. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work Emulsified Asphalt**

This work consists of preparing and treating an existing surface with bituminous material.

The accepted quantities will be paid for by the gallon (gal) at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work ASPHALT OVERLAY**

**HOT MIX ASPHALT (GRADING SX)(75)(WITH FIBER)**

All overlay operations shall be a minimum of 2-inches where identified. The overlay shall be type (GRADING SX)(75)(WITH FIBER) asphalt and the overlay shall have a 2% crown. A tack coat shall be applied on all milled surface areas. Approved tack coat material shall be applied at a rate determined by the Project Manager. The Asphalt Overlay will be measured by the Ton. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule. Fibers will not be paid for separately but shall be included in the cost of Hot Mix Asphalt (Grading SX) (75) (With Fiber).

**MEASUREMENT AND PAYMENT Site Work TRAFFIC CONTROL**

This item shall be paid for on a lump sum (LS) basis as indicated in the Bid Schedule and shall include all equipment, materials, and labor; for supplying and installing traffic control as per the Contractor supplied traffic control plan. This item also includes but is not limited to supplying signs, installation, monitoring, maintenance, daily superintendence provided by a traffic control supervisor, moving signs and removal of traffic control devices for the duration of the project. Traffic Control will be measured by the LS. The accepted quantities will be paid for at the contract unit price for each of the pay items that appear in the bid schedule.

**MEASUREMENT AND PAYMENT Site Work PAVEMENT MARKINGS**

Striping and thermoplastic pavement markings plan and field layout shall be approved by the Town Project Manager prior to application. Repaint, replace, or install all striping and thermoplastic markings removed during patching or mill and overlay applications. These shall include all yellow center and white shoulder striping as well as stop bar, crosswalk, or other existing thermoplastic markings as applicable in a plan to be approved by the Town prior to application. Striping quantity should cover at minimum 100 sf/gal to a max of 110 sf/gal. Striping shall be epoxy. Access must always be maintained for residents in the work area. Traffic Control Plan shall be prepared and submitted to Town for approval prior to any work. The cost of all activities not specifically included on the bid tab shall be borne by the contractor.

**2.6 SCOPE OF WORK**

**2.6.1 CHANGES IN THE WORK**

When changes in the work are authorized as provided in Article 2.2.15 and the PUBLIC WORKS DEPARTMENT agrees that additional payment is warranted, payment shall be determined as follows:

- (a) Unit prices previously approved;



- (b) An agreed lump sum; or
- (c) The actual cost of labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition, there shall be added on an amount to be agreed upon, but not to exceed fifteen percent (15%) of the actual cost of the work, to cover the cost of general overhead and profit.

The PUBLIC WORKS DEPARTMENT shall determine which methodology should be applied to determine the proper amount of the additional payment.

### **2.6.2 ASSIGNMENT OF CONTRACT**

The CONTRACTOR shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract, or of his rights, title, or interest therein, without the written consent of the TOWN. The CONTRACTOR may utilize the services of specialty subcontractors on those parts of the project which, under normal contraction practices, are performed by specialty subcontractors.

The CONTRACTOR shall not award work to subcontractors in excess of fifty percent (50%) of the contract price without prior written approval of the TOWN.

### **2.6.3 SEPARATE CONTRACTS**

The TOWN reserves the right to execute separate contracts in connection with this project. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. If the proper execution or results of any part of the CONTRACTOR's work depends upon the work of any other contractor, the CONTRACTOR shall inspect and promptly report to the PUBLIC WORKS DEPARTMENT any defects in such work that render it unsuitable for such proper execution and results.

### **2.6.4 SUBCONTRACTS**

As provided herein, the CONTRACTOR shall notify the TOWN, in writing, of the names of the subcontractors proposed for the work, designating the portions of work to be performed by each. The CONTRACTOR agrees that he is as fully responsible to the TOWN for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the TOWN.

### **2.6.5 UNDERGROUND OBSTRUCTIONS**

As provided herein, the CONTRACTOR shall anticipate all underground obstructions, such as water lines, gas lines, sewer lines, concrete, debris, and all other types of utility lines and, unless authorized pursuant to Article 2.2.2, no extra payment will be allowed for the removal, protection, replacement, repair or possible increased cost caused by underground obstruction. Any such lines or obstructions indicated on the Drawings show only the approximate location from the information available and must be verified in the field by the CONTRACTOR. The PUBLIC WORKS DEPARTMENT will endeavor to familiarize the CONTRACTOR with all underground utilities and obstructions, but this will not relieve the CONTRACTOR from full responsibility for anticipating all underground obstructions.

In accordance with § 9-1.5-103, C.R.S, the CONTRACTOR shall not make or begin excavation without first notifying the owners, operators or association of owners and operators having underground facilities in the area of such excavation. Notice may be given in person, by telephone, or in writing and shall be given at least two business days prior to beginning work, or as otherwise provided by Colorado law.

The CONTRACTOR shall protect the existing utilities in a manner as requested by the respective utility owners at no extra compensation. The CONTRACTOR agrees to defend, indemnify and hold the TOWN, its officers, employees and agents, harmless from any and all losses, damages or claims which may arise out of, or be connected with, construction performed where said utilities are located.

Should it be necessary to relocate utilities in the area of construction, the TOWN shall coordinate the relocations with the utility owner and the CONTRACTOR.

**2.6.6 EMERGENCY WORK**

In an emergency affecting the safety of life or of the work or of adjoining property, the CONTRACTOR is, without special instructions or authorization from the PUBLIC WORKS DEPARTMENT, hereby permitted to act at his discretion to prevent such threatening loss or injury. He shall also act, without appeal, if so authorized or instructed by the PUBLIC WORKS DEPARTMENT. Any compensation claimed by the CONTRACTOR as a result of emergency work, shall be determined by agreement or in accordance with Article 2.6.1.

**2.6.7 CLEANING UP**

The CONTRACTOR shall remove, at his own expense, from the TOWN's property and from all public and private property, all temporary structures, rubbish and waste materials resulting from his operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission of such disposal granted to the CONTRACTOR by the TOWN thereof where such disposal is in accordance with local ordinances and is approved by the PUBLIC WORKS DEPARTMENT.

**2.6.8 ASPHALT SPECIFICATIONS**

Manholes, valve boxes, and thermoplastic markings shall be covered with an appropriate material during the operation and shall be removed immediately after pavement operations.

Hot mix asphalt shall be placed only on properly prepared unfrozen surfaces that are free of water, snow, and ice. The hot mix asphalt shall be placed only when both the air and surface temperatures equal or exceed the temperatures specified in Table 401-3 and the Project Manager determines that the weather conditions permit the pavement to be properly placed and compacted.

**401-3**

**Placement Temperature Limitations in °F**

Compacted Layer Thickness in inches	Minimum Surface and Air Temperature °F	
	Top Layer	Layers Below Top Layer

< 1 ½	60	50
1 ½ < 3	50	40
3 or more	45	35

The Contractor shall schedule the work so that no planned or recycled surface is left without resurfacing for more than 10 calendar days. The Contractor shall immediately place a temporary hot mix asphalt layer on any surface that has been planned or recycled and cannot be resurfaced per the above temperature requirements within 10 calendar days after being planned or recycled. The minimum thickness of the temporary hot mix asphalt layer shall be 2 inches. The Contractor shall perform the process control required to assure adequate quality of the hot mix asphalt used in the temporary layer. All applicable pavement markings shall be applied to the temporary layer surface. The Contractor shall maintain the temporary layer for the entire period that it is open to traffic. Distress that affects the ride, safety, or serviceability of the temporary layer shall be immediately corrected to the satisfaction of the Project Manager. The temporary hot mix asphalt layer shall be removed when work resumes.

Hot Mix Asphalt (Grading SX) (75) (With Fiber) shall include reinforcement fiber strands with virgin aramids that meet the following requirements:

Property Requirement

Nominal Specific Gravity 0.91 to 1.44

Maximum Length 0.75 inches

Only reinforcing fiber strands that are not detrimental to the pavement will be allowed. The Contractor shall store and maintain reinforcing fiber strands in accordance with the manufacturer's recommendations and shall ensure that the fiber blend corresponds with the manufacturer's recommendations for the hot mix asphalt materials being used on the project. The Contractor shall follow the manufacturer's recommended procedures for placement of fiber strand reinforced warm or hot mix asphalt pavement.

Acceptable products are:

- ACE FIBERTM,
- FORTA-FI®, or
- An approved equivalent.

Aramid fibers will not be paid for separately but shall be included in the cost of Hot Mix Asphalt (Grading SX) (75) (With Fiber).

The Contractor shall ensure there is a manufacturer's representative experienced in incorporating reinforcing fibers and placing fiber reinforced warm or hot mix asphalt present on the project when placement of the fiber reinforced mix begins. The manufacturer's representative shall have experience with fiber reinforced pavements based on the support of at least three projects previously constructed in the United States. This representative may be a representative of the fiber supplier, the asphalt mix designer, or a private consultant, able to provide sufficient documentation including applicable projects and experience. The representative's name, qualifications, and previous experience shall be provided to the Project Manager for approval at least 5 working days before the fiber reinforced paving operation begins. The representative shall remain on site for the first two days of placing fiber reinforced pavement, at a minimum, and until an acceptable production sequence is established.

Any changes to the asphalt mix or fiber material beyond the allowed tolerances during production shall be disclosed by the representative and submitted in writing to the Project Manager by the Contractor as a change in mix design. The Contractor shall inject reinforcement fiber strands through the Recycled Asphalt Pavement collar, or prior to the addition of liquid asphalt cement, with a metered blower system. The Contractor shall ensure that reinforcement fiber strands are added at the specified rate per the mix design. The Contractor shall ensure that virgin aramid fibers are introduced at a minimum dosage rate of 2.1 ounces per ton of hot or warm mix asphalt pavement. If there is evidence of fiber balls at the discharge chute, the Contractor shall immediately adjust operations according to the manufacturer's recommendation to correct the problem. The Contractor shall also remove all observed fiber balls during placement. The Project Manager may require the Contractor to cease operations if fiber balls are present, until a correction plan has been submitted and approved. Any delays due to shutting down due to the presence of fiber balls shall be considered non-excusable and non-compensable. The Contractor shall provide the Project Manager with documentation detailing total reinforcement fiber strands added to the warm or hot mix asphalt at the end of each day's production. The documentation shall include total reinforcement fiber strands added and the percentage of total reinforcing fibers that are virgin aramid fibers.