



**TOWN OF CASTLE ROCK
EQUIPMENT ACQUISITION AGREEMENT
(Replacement Street Sweeper for Public Works)**

DATE: _____

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

NEVEREST EQUIPMENT COMPANY, LLC, a Colorado limited liability company, 6681 Colorado Blvd., Unit 5, Commerce City, Colorado 80022 (“Vendor”).

RECITALS:

- A. The Town wishes to engage Vendor to provide the goods more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Vendor shall provide all of the equipment, goods and materials as set forth on *Exhibit 1* (“Goods”). Vendor shall provide the Goods consistent with standards and practices of the profession.

Section 2. Total Obligation. The Town’s total obligation to Vendor under this Agreement for the Goods shall not exceed \$275,981.24, unless authorized in writing by the Town.

Section 3. Payment. Vendor shall invoice Town upon delivery of the Goods. The Town may withhold payment in whole, or in part for the Goods found by the Town to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, not in conformance with all applicable federal, state, and local laws, ordinances, rules and regulations, or if Vendor is in default of Section 5, below. The Town shall remit payment, whether whole or in part within 30 days receipt of such invoice.

Section 4. Completion. Vendor shall deliver the Goods to the Town no later than May 31, 2022. Vendor shall devote adequate resources to assure timely delivery of the Goods in accordance with the standards specified in this Agreement. Vendor shall use a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Vendor. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final

day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 5. Inspection and Warranty. Town reserves the right to inspect the Goods provided under this Agreement at all reasonable times and places during the term of this Agreement. Alternatively, the Town may refuse the Goods and cancel all or any part of this Agreement if Vendor fails to deliver all or any part of the Goods in accordance with the terms and conditions of this Agreement. Failure by the Town to inspect and test the Goods shall not relieve Vendor of such responsibility. Any acceptance by the Town shall not be deemed a waiver or settlement of any defect or nonconformity in such Goods. If Town elects to accept nonconforming or defective Goods, Town, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Town for the nonconformity or defect.

Vendor expressly warrants that all materials, goods and/or equipment furnished under this Agreement shall be free from defects in materials or workmanship, are installed properly and in accordance with the manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Vendor, shall, at its option, repair or replace any material and/or equipment that fail to satisfy this warranty during the warranty period. Additionally, Vendor agrees to assign to the Town all written manufacturer warranties relating to the supplies and to deliver such written warranties to the Town.

Section 6. Risk of Loss. With respect to any equipment provided under this Agreement, risk of loss shall not pass to the Town until such equipment has been received and accepted by the Town, pursuant to Section 5, above, at the destination specified by the Town. Vendor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement by the Town to pay freight, express or other transportation charges.

Section 7. Assignment. This Agreement shall not be assigned by Vendor without the written consent of the Town.

Section 8. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 9. Colorado Governmental Immunity Act. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 10. Indemnification. Vendor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Vendor or any of their employees or agents pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Vendor.

Section 11. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 12. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 13. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 14. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

Section 15. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 16. Governing Law. This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

Section 17. Independent Contractor. Vendor and the Town hereby represent that Vendor is an independent contractor for all purposes hereunder. Vendor represents and warrants that they are free from the Town's direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Vendor represents and warrants that the Town does not control what work or services they will perform or the manner



in which such work or services will be performed. As such, Vendor is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Vendor shall not create any indebtedness on behalf of the Town.

Section 18. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Vendor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Vendor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Daniel Sailer, Director of Public Works

VENDOR:

NEVEREST EQUIPMENT COMPANY, LLC

By: *Brian Balchunas*

Its: Owner

EXHIBIT 1

GOODS AND FEE SCHEDULE

Vendor shall provide a 2022 Ravo Street Sweeper to the Town as follows:

Product	Description	Quantity	Unit Price	Total Price
1.1	5-iSeries 25 MPH, meeting NHTSA Road safety standards, including: Tier 4 engine, Inspection door retainer, Gutter brush angle adjustment right hand side, Step on brooms, 12V Plug inside cabin, Full heavy duty suction line, borium, Full LED package (work lights front and back, beacons, etc.) Suction nozzle camera + second monitor	1.00	232,247.00	232,247.00
7.2.2	Gutter brush angle adjustment left AND right side	1.00	869.00	869.00
7.4.1	Third brush / Weedcutter complete (including double angle adjustment)	1.00	15,109.00	15,109.00
7.4.3	Third brush quick release system	1.00	2,256.00	2,256.00
10.1	High pressure water pump with spray gun mounted right hand side	1.00	3,916.00	3,916.00
10.2	Water recycling system	1.00	4,385.00	4,385.00
12.1	Air suspended driver seat	1.00	1,505.00	1,505.00
11.1	Wander hose (8 inch) through container roof and mounted on rear door including mounting rack	1.00	4,521.00	4,521.00
7.3	Borium Fan	1.00	1,110.00	1,110.00
13.3	Blind spot camera on left hand side of cabin (connected to dashboard monitor)	1.00	1,043.00	1,043.00
Shipping	Shipping and Handling Charge	1.00	13,000.00	13,000.00
Misc	Shipping Discount 50%	1.00	-6,500.00	-6,500.00
Misc	Pricing based on Source Well Contract # 093021-FAY	1.00	0.00	0.00
Product	Description	Quantity	Unit Price	Total Price
RAV5750082	iSERIES: MAINTENANCE KIT B TIER4 (CUMM)	1.00	427.27	427.27
RAV5750084	iSERIES: MAINTENANCE KIT C TIER4 (CUMM)	1.00	699.97	699.97
RAV5750086	iSERIES: MAINTENANCE KIT C+ TIER4 (CUMM)	1.00	918.00	918.00
RAV5752441	WEARKIT EASYMOUNT	1.00	475.00	475.00

Total: \$275,981.24