

**CITY OF THORNTON**

**REQUEST FOR PROPOSALS**

**FOR**

**NATURAL HAZARD MITIGATION PLAN**

**PROJECT NO. 163-21**

**MAY 2021**

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### III. NOTICE REQUEST FOR PROPOSALS

The City of Thornton, CO (“Thornton”) respectfully requests separate sealed Proposals for Professional Services for the **Natural Hazard Mitigation Plan (HMP), Project No. 163-21** (hereinafter referred to as “Project”). Proposals will be received until **5:00 p.m.**, local time, **July 1, 2021**, in the Contract Administration Office, 9500 Civic Center Drive, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326.

Approved Methods for Submission of Proposals: Physical proposals may be submitted by mail or courier service; Or Physical Proposals will be received at the City Hall address listed above.

Late Proposals will not be accepted under any circumstances.

Project Description: This project is to complete a new Hazard Mitigation Plan for the City of Thornton. Once complete and approved, this Plan will replace the 2017 Hazard Mitigation Plan, which is currently in effect. Please see this website to review the existing document: <https://www.thorntonco.gov/government/citydevelopment/planning/hazard-mitigation/Pages/default.aspx>

The project will be a partnership among the cities of Thornton, Federal Heights, and Northglenn, with Thornton as the lead agency. Thornton is the recipient of a grant from the State of Colorado (FEMA funding). The total budget for this projects is approximately \$70K.

To be minimally qualified for consideration for award, proposing firms must have successfully completed natural hazard mitigation plans that have a similar degree of complexity. All plans must have been approved by FEMA, and have been adopted by the elected officials of their respective communities.

Thornton utilizes the BidNet Direct System at [www.BidNetDirect.com](http://www.BidNetDirect.com) to distribute official copies of the Request for Proposals (“RFP”) for use in preparing Proposals. Proposing firms will be required to register with the website to download the RFP documents and addenda. There is no charge by BidNet Direct for this service. If you experience problems with the BidNet Direct website, please call 1-800-835-4603 for assistance. Proposing firms are required to acknowledge all addenda with their Proposal and are encouraged to either register with the website or to request to view the addenda posted on the Contract Administration bulletin board prior to submission of a Proposal. Proposing firms that do not acknowledge all addenda may be considered non-responsive. Upon request, the RFP documents, including addenda, are also available for viewing on the City of Thornton Website, <https://solicitations.thorntonco.gov/solicitations> or at the Contract Administration office located on the 2nd floor of City Hall at 9500 Civic Center Drive, Thornton, CO. Proposing firms that do not have download and/or printing capability in-house may contact a commercial reprographics company for assistance with downloading and printing the RFP.

Late Proposals will not be accepted under any circumstances. Any Proposal(s) received after the scheduled deadline for submitting Proposals will be returned to the proposing firm unopened. Sole responsibility rests with the proposing firm to see that their Proposal is received on or before the deadline.

Thornton reserves the right to reject any and all Proposals, in part or in whole, and to award the Project to the most responsive and responsible firm(s) as deemed in the best interest of Thornton; further, the right is reserved to waive any formalities or informalities contained in said Proposal(s).

An optional Zoom Pre-Proposal Conference to discuss the Project(s) will be held **June 17, 2021, at 10:00 a.m.** via a Zoom meeting. If possible, please hold all questions concerning this RFP until that time. If you wish to attend the Pre-proposal Meeting, please email [jim.jensen@ThorntonCO.gov](mailto:jim.jensen@ThorntonCO.gov) and request an invitation to the Pre-Proposal meeting for the **Natural Hazard Mitigation Plan (HMP), Project No. 163-21.**

Physical proposals shall be submitted in a sealed envelope plainly marked on the outside with the proposing firm's name and address and **"Request for Proposals, Natural Hazard Mitigation Plan (HMP), Project No. 163-21"**. Proposals delivered by mail or courier service shall be in the sealed envelope inserted into a separate mailing envelope. On the outside of the mailing envelope note **"Proposal Enclosed, Natural Hazard Mitigation Plan (HMP), Project No. 163-21"**. Please note that Proposals will be accepted via mail, courier or delivery services (FedEx, UPS, etc.). However, due to potential delays associated with COVID-19, proposing firms should consider submitting their Proposal earlier than normal. Proposing Firms are responsible for ensuring their Proposal is received prior to the due date/time.

Physical proposals shall be submitted in a sealed envelope plainly marked on the outside with the proposing firm's name and address and **"Request for Proposals, Natural Hazard Mitigation Plan (HMP), Project No. 163-21"**.

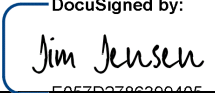
All questions shall be directed in writing to Jim Jensen, Contracts Manager, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax 303-538-7556, or e-mail – [jim.jensen@ThorntonCo.gov](mailto:jim.jensen@ThorntonCo.gov), 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays.

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First Advertisement: June 3, 2021, Northglenn-Thornton Sentinel

Second Advertisement: June 10, 2021, Northglenn-Thornton Sentinel

Third Advertisement: June 17, 2021, Northglenn-Thornton Sentinel

BY:    
 DocuSigned by:  
E057D2706999405...  
Jim Jensen  
Contracts Manager

## IV. PROPOSAL INSTRUCTIONS AND INFORMATION

Thornton is soliciting written Proposals from qualified firms for Professional Consulting Services for **Natural Hazard Mitigation Plan (HMP), Project No. 163-21**. To be eligible for consideration, the proposing firm must be capable of supplying the Services as described herein, and must meet all other criteria outlined in this RFP.

### A. INQUIRIES AND CORRECTIONS

All inquiries relating to this RFP shall be addressed in writing to:

City of Thornton  
Attention: Jim Jensen, Contracts Manager  
9500 Civic Center Drive  
Thornton, CO 80229-4326  
Fax: 303-538-7556  
E-mail: [jim.jensen@ThorntonCo.gov](mailto:jim.jensen@ThorntonCo.gov)

If a proposing firm, subsequent to the Pre-Proposal Conference, finds discrepancies in or omissions from the RFP, or requires additional clarification of any part thereof, a written request for interpretation shall be submitted to the Contracts Manager. Any interpretation of or change made to the RFP will be made by written addendum to each proposing firm, and will become part of the RFP and of any Agreement awarded. Thornton will not be responsible for the accuracy of any other ORAL EXPLANATIONS, INTERPRETATIONS, OR REPRESENTATIONS. All inquiries shall be made in writing and all responses will be provided in writing, with responses being made available to all proposing firms. To be given consideration, inquiries must be received no later than 5:00 p.m. on the tenth (10<sup>th</sup>) Calendar Day prior to the date established for the submission of the Proposal. It shall be the responsibility of each proposing firm to verify that every addendum has been received prior to submitting a Proposal.

### B. SUBMITTAL DATE AND LOCATION

All Proposals must be received in the Contracts and Purchasing office of Thornton City Hall, 9500 Civic Center Drive, 2<sup>nd</sup> Floor, Thornton, CO 80229-4326 no later than **5:00 p.m.** local time on **July 1, 2021**. Physical proposals must be submitted in a sealed envelope plainly marked on the outside with the proposing firm's name and address and "**Request for Proposals, Natural Hazard Mitigation Plan (HMP), Project No. 163-21**", and addressed to the Contracts Manager. Proposing firm's name and address shall also appear on the outside of the sealed envelope containing the Proposal. If the Proposal is sent by U.S. mail or courier service, the Proposal shall be contained in a sealed inner envelope or box, which is then inserted into the mailing envelope or box. Indicate "**Proposal Enclosed, Natural Hazard Mitigation Plan (HMP), Project No. 163-21**", on the outside of the mailing envelope or box.

**C. LATE AND ELECTRONIC PROPOSALS**

Late Proposals will not be accepted under any circumstance, and any Proposal so received shall be returned to the proposing firm unopened. In addition, proposals received via electronic devices other than the BidnetDirect.com website (i.e. e-mail) are not acceptable and will be rejected upon receipt. Proposing firms will be expected to allow adequate time for delivery of their Proposals either by airfreight, postal service, or other means.

**D. CONFIDENTIAL AND PROPRIETARY INFORMATION**

Prior to Award, any information contained within the Proposal may be held confidential and proprietary by Thornton as solely determined by Thornton. After Award, the information within the Proposal becomes public information with the exception of information that has been clearly marked as confidential and proprietary by the proposing firm. Any information marked confidential shall comply with Colorado's Open Records Act (CORA) and other applicable statutes. Thornton shall be held harmless from any claims arising from the release of confidential and proprietary information not clearly designated as such by the proposing firm or which does not comply with CORA. In general, it is not acceptable to Thornton to mark information other than financial statements, project financing data, litigation history, tax audit history, or client lists as confidential and proprietary. Further, it is not acceptable to mark price proposal information as confidential and proprietary. Failure to adhere to these restrictions may result in the entire Proposal being deemed non-responsive.

**E. DEFINITION, CONTEXT, AND GENDER**

Unless otherwise specified in this document, all words shall have a common meaning unless the context in which they are used clearly requires a different meaning. Words in the singular number include the plural, and in the plural include the singular. Additionally, words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

**F. CONDITIONS OF PROPOSAL SUBMITTAL**

1. All proposing firms shall comply with all conditions, requirements, and specifications contained herein, and any departure from such conditions, requirements, or specifications may constitute sufficient cause for rejection of the entire Proposal.
2. The Proposal must be signed by a duly authorized official of the proposing firm submitting the Proposal.
3. No Proposal will be accepted from any person, firm, or corporation that is in arrears for any obligation to Thornton, or that otherwise may be deemed irresponsible, unresponsive, or untrustworthy by Thornton staff or Thornton City Council.



4. Only one (1) Proposal will be accepted from any person or corporation. If multiple options are requested or offered, each option must be submitted under a single Proposal and in a single envelope or box.
5. All terms and prices quoted must be firm for a period of ninety (90) Calendar Days from the Proposal submittal date or until Award, whichever is sooner.
6. Thornton reserves the right to reject any and all Proposals, or any part thereof. Thornton further reserves the right to waive any formalities, or informalities contained in any Proposal, and to award the Agreement to the most responsive, responsible, and trustworthy proposing firm as deemed in the best interest of Thornton.
7. All Proposals shall be prepared in a comprehensive manner as to content, but no necessity exists for expensive binders or promotional materials.
8. All costs, including travel and expenses incurred in the preparation of the Proposal, shall be borne solely by the proposing firm.
9. Section 7.4 of the Thornton City Charter prohibits Thornton from entering into any contracts involving an amount in excess of one hundred dollars (\$100) in which an elective or appointive officer or any member of the officer's family has any pecuniary interest, direct or indirect, in the proposing firm or this RFP. Certain other restrictions may also apply to contracts in which an employee, member of a board or commission, City Council member or member of their family has an existing or pending financial or personal interest. For the purposes of this Charter Section, a domestic partner shall be considered a family member. Therefore, the proposing firm shall submit with the Proposal the following declaration contained in Exhibit 1, Acceptance of Conditions Statement.

No City Council member, member of a board or commission, Municipal Judge, City Manager, City Attorney, or employee of the City of Thornton, or any such person's family member, domestic partner, or person assuming a relationship being the substantial equivalent of the above, has an existing or pending direct or indirect financial, pecuniary, or personal interest in the proposing firm or this RFP, except as follows (list, if any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Thornton reserves the right to negotiate final terms with the selected firm, which terms may vary from those contained in this document.
11. Thornton reserves the right to request a client list from the proposing firm, for the purpose of determining potential conflicts of interest. Such list shall be considered proprietary.

12. Thornton will not return Proposals, or other information supplied to Thornton, to the proposing firms.

**G. EVALUATION OF PROPOSALS**

All Proposals will be evaluated by a Project Committee assigned by the City Manager, or his designee. Proposals shall be evaluated on the basis of the Evaluation Criteria set forth herein. In addition, any other pertinent information which becomes available during the evaluation, interview, or negotiations may be considered in the evaluation. The committee may make a recommendation for award on the basis of the Proposals received, or may choose to "short list" prospective firms for further consideration, which may include interviews and/or negotiations. The proposing firm selected for the award will be chosen on the basis of the apparent greatest benefit to Thornton, and not necessarily on the basis of lowest price. The City Manager, or his designee, shall make the final determination of the firm selected.

**H. EVALUATION CRITERIA**

To be minimally qualified for consideration for award, proposing firms must have successfully completed natural hazard mitigation plans that have a similar degree of complexity. All plans must have been approved by FEMA, and have been adopted by the elected officials of their respective communities.

Proposals from firms meeting the minimum qualifications shall be evaluated on the basis of the following criteria:

1. Responsiveness to the needs of Thornton and the degree to which the Proposal meets or exceeds the requirements of the RFP, including the time required to complete the Project, the proposed solutions offered, the means and methods of accomplishing the Work, and the Scope of Work offered.
2. Responsibility and trustworthiness of the proposing firm, including financial capability to perform the Project and claims and litigation history.
3. Past performance of the proposing firm for Thornton and other owners and results of reference checks.
4. Experience of the proposing firm in dealing with municipal or other governmental agencies in projects of similar size, scope, and nature.
5. The proposing firm's engagement team, including the experience and resumes of key personnel assigned to the Project.
6. The proposing firm's fee (not-to-exceed price) structure, based on the Work to be provided.

**I. GENERAL REQUIREMENTS OF THE SUCCESSFUL PROPOSING FIRM**

1. The successful proposing firm shall enter into a written Agreement with Thornton in the form attached hereto as Exhibit 2 and incorporated by reference herein.
2. The successful proposing firm shall be required to maintain insurance coverages as set forth in Exhibit 2.
3. The successful proposing firm shall be prohibited from assigning or subcontracting the whole, or any part of the Agreement, without the prior written consent of Thornton.
4. The successful proposing firm shall not hire, discharge, promote, demote, or otherwise discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified solely because of race, color, creed, religion, national origin, ancestry, gender, physical or mental disability, or age.
5. The successful proposing firm and its employees will operate as an independent contractor and will not be considered employees of Thornton.

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## V. PROPOSAL PREPARATION

- A. Proposals submitted shall contain all information as requested herein, and any additional information necessary to evaluate the overall benefit of the Proposal to Thornton.
1. Submission shall include the following:
    - a. One (1) original paper copy of the proposal submission with the proposal stamped as "Original".
    - b. One (1) electronic copy on a flash drive of the proposal submission. All envelopes containing these items shall be clearly marked.

**Note:** Vendors submitting confidential information shall only submit one (1) copy of such information. When/If submitting electronically through the BidNetDirect.com vendor portal, confidential information shall be submitted in a separate PDF format file and marked confidential in both the file name and on the individual pages. When/If submitting a physical proposal, confidential information shall be placed in a separate sealed envelope and inserted into the main proposal submittal envelope or box. Any information not marked as confidential will be considered public record.

- B. Proposals shall include the following:
1. A cover letter stating the name, address, and telephone number of the proposing firm, and bearing the signature of the person having the authority to make the Proposal for the proposing firm, and bind the firm in a formal Agreement with Thornton.
  2. An executed Exhibit 1, Acceptance of Conditions Statement, which:
    - a. Affirms the acceptance of all conditions and requirements contained in this RFP;
    - b. Contains acknowledgement of all addenda issued; and
    - c. Lists the names of any of the proposing firms' employees who are family members of Thornton employees, officers, board or Council members.
  3. The proposed Exhibit B, Consultant's Personnel and Subconsultant's Listing, which is in Exhibit 2, Agreement, showing all personnel and subconsultant's proposed for assignment to the Project team. Also submit resumes with education and work experience for key personnel.
  4. A written narrative that defines the methods and means by which the proposing firm will perform the Work outlined in this RFP.
  5. A Project timeline outlining the major tasks, phases, timeframes, and milestones necessary to complete the Project. Identify the specific employees and subconsultants that will be involved in each task.

6. The proposed Exhibit C, Schedule of Charges, which is in Exhibit 2, Agreement, containing the billable hourly rate schedule of the proposing firm including the hourly rates for all personnel assigned to the Project team, subconsultant's fees, and rates for proposed reimbursable expenses such as mileage, equipment, printing, postage, courier service fees, etc. Reimbursable expense categories identified in the Reimbursable Expense Schedule must include all expenses for which the proposing firm will expect separate reimbursement. Expense categories not identified will not be reimbursed separately but are assumed to be included in the billable hourly rates or the fixed fee, whichever is applicable. Reimbursable expenses are reimbursed at cost. The proposed Schedule of Charges will be the sole basis of payment.
  7. Proposed not-to-exceed cost for all Work, including all estimated reimbursable expenses.
  8. A list of what portion of the Work, if any, will be subcontracted.
  9. A list of references for which similar services have been provided. Include current contact names, addresses, and telephone numbers.
  10. An executed Exhibit 3, Reference Authorization and Release Form.
  11. Any other information deemed necessary by the proposing firm.
  12. Note that Exhibit D, Affidavit is not required to be submitted with the Proposal. This exhibit is required only from the selected firm, and only if the selected firm is a sole proprietorship or an individual. If applicable, the selected firm will submit Exhibit D and the required identification along with the executed Agreement.
  13. Verification of eligibility from SAM.gov.
- C. Submittal of a Proposal shall be taken as prima facie evidence that the proposing firm has full knowledge of the scope, nature, quality, and quantity of the Services to be performed, and the detailed requirements and conditions under which the Work is to be performed.

## VI. EXHIBIT 1

### ACCEPTANCE OF CONDITIONS STATEMENT

A. Proposing firm indicates acceptance of the following conditions:

1. City of Thornton Charter Section 7.4 prohibits Thornton from making Contracts with firms which employ certain relatives of Thornton employees unless the City Council determines that the making of such a Contract is in Thornton's best interest.

No City Council member, member of a board or commission, Municipal Judge, City Manager, City Attorney, or employee of the City of Thornton, or any such person's family member, domestic partner, or person assuming a relationship being the substantial equivalent of the above, has an existing or pending, direct or indirect, financial, pecuniary or personal interest in the proposing firm or this Request for Proposal, except as follows (list, if any, or if none so state): \_\_\_\_\_

\_\_\_\_\_

2. I/we hereby agree to all instructions, terms and conditions, and specifications contained herein.

B. I/we acknowledge the following addenda (list, if any, or if none so state): \_\_\_\_\_

\_\_\_\_\_

Proposing Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest (by officer if corporation) or Notary (if individual): \_\_\_\_\_

My Commission Expires (if notarized): \_\_\_\_\_

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## VII. EXHIBIT 2

### AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

#### NATURAL HAZARD MITIGATION PLAN (HMP), PROJECT NO. 163-21

This Professional Consulting Services Agreement to produce a **Natural Hazard Mitigation Plan (HMP), Project No. 163-21**. ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **City of Thornton**, a Colorado home rule municipality, whose address is 9500 Civic Center Drive, Thornton, CO 80229 ("Thornton") and **Business Name** whose principal place of business is located at **Business Address** ("Consultant") each may be referred to collectively as, the ("Parties") or individually as the ("Party").

#### I. RECITALS

- A. Thornton requires Professional Consulting Services in connection with the production of a **Natural Hazard Mitigation Plan (HMP), Project No. 163-21** (the "Project").
- B. Thornton selected Consultant as the most qualified firm to provide the services described in this Agreement.
- C. Consultant selected by Thornton represents it has the requisite expertise and professional experience to perform the services this Project requires as described herein and Thornton needs during the term of this Agreement.

In consideration of the promises stated herein, the Parties agree as follows:

#### II. TERMS AND CONDITIONS

- A. **Definitions, Interpretation.** Capitalized terms not defined below shall have the meanings given them in the Contract Documents where they are defined. Further, otherwise consistent with the context, the singular shall include the plural and the plural shall include the singular. The titles of articles and sections used in this Agreement are primarily for the convenience but may be used as aids in interpreting any provision herein.
  - 1. **Agreement** means the Agreement between Thornton and Consultant, including Amendments, Change Orders, and exhibits made part of the Agreement upon or after its execution.
  - 2. **Contract Documents** consist of those documents identified in the Agreement, and Change Orders and Amendments issued after execution of the Agreement.

3. Day in any Contract Document refers to a calendar day of twenty-four (24) hours measured from midnight to the next midnight.
4. Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and notes, also sometimes referred to as plans. The Drawings may contain Specifications, and the Specifications may contain Drawings.
5. Commencement Date is the designated date on which it becomes effective, but if no such date is designated, it is the date on which Thornton signs the Agreement.
6. Including shall, unless otherwise specifically stated, mean ***including, but not limited to*** and words such as ***hereby, herein, and hereunder*** and words of similar import shall be construed to refer to this Agreement in its entirety.
7. Specifications are that part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
8. Subconsultant or Subcontractor is a person or entity retained by Consultant as an independent contractor to provide labor, materials, equipment, and/or services necessary to complete a specific portion of the Work; or any other party supplying labor and material or only labor for Work under a separate contract or agreement with Consultant. Moreover, the terms “Subconsultant” and “Subcontractor” are interchangeable herein and will, at all times, have, express or convey the same meaning. The term does not include a Separate Consultant or a Separate Consultant’s subcontractors.
9. Work or Services is the various elements identified and required by the Contract Documents and includes and is the result of performing or providing all labor, services, and documentation necessary to produce, furnish, install, and incorporate all materials and equipment necessary to complete the services in accordance with the Contract Documents. Moreover, the terms “Work” and “Services” are interchangeable herein and will, at all times, have, express or convey the same meaning.

**B. Contract Documents.**

1. The following documents, including all exhibits and attachments listed, contained, or referenced in this Agreement, by this reference are incorporated verbatim into this Agreement:

- a. Thornton Approved Amendments to this Agreement.
  - b. This Agreement for Professional Consulting Services (together with Exhibits);
    - i. Exhibit A Consultant's General Scope of Services
    - ii. Exhibit B Personnel and Subconsultants Listing
    - iii. Exhibit C Schedule of Charges
    - iv. Exhibit D Affidavit (if applicable)
    - v. Exhibit E Intergovernmental Agreement
    - vi. Exhibit F Required Contract Provision Federal Aid Contract
  - c. Purchase Orders.
2. In the event there is a conflict between any of the above-listed documents, the provisions of the document listed first in order shall govern over those documents listed in descending order in subparagraph B.1 above after the first listed document
  3. Consultant may need additional documents to perform the required Work and Services, or to clarify certain aspects of the Work and Services, that are not listed in Section B.1 above. Such documents, unless specifically identified as such, are not Contract Documents. These documents, by way of example include, but are not limited to:
    - a. The Request for Proposals (including Addenda);
    - b. The Service Provider's response to the Request for Proposals;
    - c. Other Thornton policies and procedures as applicable.
  4. Consultant shall perform the Services with the staff identified in the attached **Exhibit B**, unless otherwise authorized in writing by Thornton.
- C. **Project Description.** This project is to complete a new Hazard Mitigation Plan for the Cities of Thornton, Federal Heights, and Northglenn.
- D. **Consultant's Scope of Services.** Upon recipient of a written Notice to Proceed from Thornton, Consultant acknowledges that its scope or services includes furnishing all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform and complete the Services described in the attached **Exhibit A**. ("Scope of Services" or "Services").
- E. **Term; Commencement and Termination Dates.** This Agreement shall commence on the date written above and shall terminate at such time when all of the Scope of Services in **Exhibit A** up to, and through the end of the Warranty

Phase are complete, or upon Thornton providing Consultant with seven (7) Calendar Days advance written notice, whichever occurs first. In the event this Agreement is terminated by Thornton for convenience, Thornton shall issue a written Notice of Intent to Terminate and Thornton shall pay Consultant for all Services previously authorized and completed prior to the date of the Notice of Termination and Consultant shall not be entitled to profit or overhead on uncompleted Services. If, however, Consultant has substantially or materially breached the terms of this Agreement, Thornton shall have any remedy or right of set-off available at law and equity.

F. **Compensation.**

1. **Remuneration.** Thornton agrees to pay Consultant's billable hourly rates and approved reimbursable expenses as set forth in the attached **Exhibit C, Schedule of Charges**, provided, however, the maximum amount Thornton will pay Consultant under this Agreement is not to exceed \_\_\_\_\_ dollars (\$) without a written amendment executed by the Parties.
2. **Invoicing.**
  - a. Consultant shall prepare and send by electronic format a detailed monthly invoice to [ap.invoices@ThorntonCo.gov](mailto:ap.invoices@ThorntonCo.gov).
  - b. Invoices become due and payable thirty (30) days after date of receipt by Thornton of a complete and correct invoice.
  - c. Invoices shall reference the Purchase Order Number assigned by Thornton, and be itemized showing hourly breakdowns for personnel, and other charges.
  - d. Each invoice will show the total amount from the date of the original Agreement, and any subsequently issued Purchase Orders and amendments that change the amount of the Agreement. In addition, invoices must include billing and payment summaries up to the date of the submitted invoice. Thornton reserves the right to withhold final payment until the Services are complete. Consultant shall not perform any Services without receiving a Purchase Order issued by Thornton.
  - e. Consultant shall break down invoices by the phases specified in the Scope of Work. Each phase shall be further itemized by cost for each completed task performed for that phase. Consultants will only invoice Thornton for work that is performed to Thornton's satisfaction, or the percentage of work satisfactorily performed for that phase, unless Service Provider has Thornton's written approval

in advance. Under no circumstances will Consultant submit an invoice for work for more than the total amount specified for any given phase. Furthermore, under no circumstances may Consultant bill or otherwise invoice for work not specifically authorized.

G. **Changes to Consultant's Scope of Services, Terms and Conditions.**

1. A change in Consultant's Scope of Services is any change or amendment of Services that is different from, or in addition to Consultant's General Scope of Services as defined in **Exhibit A** of this Agreement.
2. No change to the General Scope of Services, to other Contract Documents, including any request for additional compensation, shall be effective unless authorized by a written amendment executed by Thornton's City Manager ("Manager") or Manager's designee(s).
3. Except as expressly provided herein, no agent, employee, or representative of Thornton has the authority to change or modify - directly or by an implied course of action, the General Scope of Services or the terms of this Agreement.

H. **Consultant's Personnel, Subcontracting.**

1. Approval of Key Professionals. Consultant shall perform the Services with the persons, personnel, subconsultants and named entities identified in the attached **Exhibit B**, unless otherwise authorized in writing by Thornton. All of Consultant's key professional personnel identified in **Exhibit B** shall be assigned by Consultant or its subconsultant (including any subcontractors) to perform the Services under this Agreement. If Thornton requires Consultant to identify certain subcontractors, other entities, personnel or individuals ("Key Professionals") before the Agreement's commencement date for Thornton's review and acceptance, Consultant shall submit a list of Key Professionals, along with their résumés and information, describing each one's abilities to perform their assigned tasks no later than thirty (30) days before this Agreement's commencement date. If Thornton does not respond within fifteen (15) days from receiving Consultant's list, all listed Key Professionals will be deemed approved by Thornton.
2. Replacement of Key Professionals. The Parties understand that Key Professionals will be engaged to perform their specialty Services required by this Agreement, and Consultant and its subconsultant shall retain Key Professionals for the term of this Agreement to the extent practicable and to the extent their specialties maximizes the quality of Services performed hereunder. If Consultant decides to replace a Key Professional, it shall notify Thornton in writing of the changes it desires to make. Thornton will respond to Consultant regarding replacement of a Key Professional within

fifteen (15) days from the date Thornton receives Consultant's request. Consultant shall not replace any Key Professional without Thornton's written approval, which will not be withheld unreasonably.

3. Performance by Key Professionals. If, during the term of this Agreement, Thornton determines that a Key Professional's performance is unacceptable, they will notify Consultant and give Consultant the time that Thornton considers reasonable to correct such performance. Thereafter, if a Key Professional's performance is still unacceptable, Thornton will notify Consultant to reassign the Key Professional and Consultant shall use its best efforts to obtain an adequate substitute within ten (10) days from the date of the notice.
4. Consultant's Subconsultants.
  - a. Thornton's Approval Required. Consultant may retain and subcontract with subconsultants listed in Exhibit B, Personnel and Subconsultants Listing; however, Consultant shall not execute a final agreement with any other subconsultant without obtaining written approval from Thornton first. For Thornton's approval, Consultant must submit a written description of the nature and extent of the Services a subconsultant will provide, and the subconsultant's name, address, professional experience and qualifications and any other important information. Thornton's approval of the subconsultant shall not relieve Consultant of any obligations under this Agreement. Since Consultant's representations and professional qualifications is the consideration for Thornton to enter into this Agreement, Thornton, for any reason, has the right to reject any proposed subconsultant it deems unqualified or unsuitable to perform the proposed Services, and to limit the number of subconsultants retained by Consultant.
  - b. Conflict of Interest Prohibited. No Consultant shall retain any subconsultant to perform any Services under this Agreement if Consultant, by making a reasonable inquiry, knows or should know is connected with the sale or promotion of equipment or material used to perform any Services that would be a conflict of interest. However, in unusual circumstances, Thornton may waive in writing a conflict of interest provided Consultant has fully disclosed the conflict of interest beforehand. If at any time, the Consultant becomes aware of a potential conflict of interest, it shall immediately notify Thornton in writing of the potential conflict. The notification shall contain all pertinent information to fully and accurately describe the conflict of interest. Thornton, in its sole discretion, shall determine the existence of a conflict of interest and may terminate

this Agreement in the event such a conflict exists after it has given Consultant written notice describing the conflict.

5. Approval, Rejection of Consultant's Key Professionals, Personnel and Subconsultants. Thornton may, in its reasonable discretion, approve or reject any person or persons at any time working for Consultant. No acceptance by Thornton of any Key Professional, subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Thornton to reject defective Work.
6. Waiver. Consultant shall be fully responsible to Thornton for all acts and omissions of its subcontractors, Key Professionals and other persons performing or furnishing any Work or Services on behalf of Consultant just as Consultant is responsible for Consultant's own acts and omissions. Any agreement between Consultant and its approved subconsultant(s), Key Professionals and other persons must have a legally binding provision whereby they agree to waive all rights to make a claim of liability or payment against Thornton arising out of the performance of the Services under this Agreement. Nothing in the Contract Documents shall create any contractual relationship or obligation to pay any monies due to the same, except as the law may require.

I. **Compliance with All Laws and Regulations.**

1. All of the Services performed under this Agreement by Consultant shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of Thornton.
2. All applicable state and federal laws, county and city ordinances, licenses and regulations of all authorities having jurisdiction over this Agreement and the Services shall apply to this Agreement throughout and will be deemed to be included in this Agreement the same as though written out in full.
3. Worker Status. Pursuant to Colorado law, Consultant does, by its signature and attestation on this Agreement certify to the following:
  - a. Consultant, as of the date of this Agreement, does not and shall not knowingly employ or contract with an illegal alien who will perform Services under this Agreement.
  - b. Consultant shall participate in either the Employment Verification Program ("E-Verify Program") created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor

program, or the Department Program, which is the employment verification program established by the Colorado Department of Labor and Employment (the "Department") pursuant to C.R.S. §§ 8-17.5-102(5)(c) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform Services under this Agreement.

- c. Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform Services under this Agreement through participation in either the E-Verify Program or the Department Program.
- d. Consultant shall not enter into a contract with a subconsultant that fails to certify to Consultant that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- e. Consultant shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- f. If Consultant obtains actual knowledge that a subconsultant performing work under this Agreement employs or contracts with an illegal alien, Consultant shall:
  - i. Notify the subconsultant and Thornton within three (3) days that Consultant has actual knowledge that the subconsultant is employing or contracting with an illegal alien; and
  - ii. Terminate the subcontract with the subconsultant if within three (3) days of receiving the notice required pursuant to this subparagraph, the subconsultant does not stop employing or contracting with the illegal alien; except that Consultant shall not terminate the subcontract with the subconsultant if during such three (3) days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.
- g. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established by C.R.S. § 8-17.5-102(5).
- h. If Consultant violates any provision of this certification, Thornton may terminate this Agreement for breach of contract. If this Agreement is



so terminated, Consultant shall be liable for actual and consequential damages suffered by Thornton.

- i. To the extent it applies, in accordance with Colorado law, if Consultant is a natural person eighteen (18) years of age or older and a sole proprietor, Consultant by signing this Agreement affirms that upon Notice of Award, Consultant will complete and file with Thornton the attached **Exhibit D, Affidavit** and provide acceptable identification as described in the Affidavit.

**J. Confidentiality of Thornton's Information.**

1. Thornton will provide Consultant with reports and such other data as may be available to Thornton ("Project Information") and reasonably required by Consultant to perform the Services.
2. No Project Information shall be disclosed by Consultant to third parties without prior written consent of Thornton or pursuant to a lawful Court Order directing such disclosure.
3. All Project Information provided by Thornton to Consultant shall be returned to Thornton at the end of the Project upon Thornton's request. Consultant is otherwise authorized by Thornton to retain copies of Project Information at Consultant's expense.

**K. Ownership, Use of Work Product.**

1. All Services, data, drawings, designs, plans, reports, studies, computer programs (nonproprietary), computer input and output, analyses, tests, maps, surveys, aerial photography or any other materials ("Work Product") developed for this Project by Consultant are and shall be the sole and exclusive property of Thornton. Aerial photography supplied by Thornton to Consultant shall not be utilized by Consultant for any purpose other than the Project.
2. Consultant hereby transfers any copyright, trademark, or other intellectual property rights of Work Product to Thornton. However, any reuse of Work Product by Thornton without prior written authorization by Consultant other than for the specific intended purpose of this Agreement will be at Thornton's risk.
3. Consultant shall provide Thornton with ten (10) days of advance written notice that it has Project Information and Work Product it intends to dispose of, during which time Thornton may take physical possession of such documents.

L. **Compliance With Patent, Trademark and Copyright Laws.**

1. Consultant warrants that all Services performed under this Agreement shall comply with all applicable patent, trademark, and copyright laws, rules, regulations, and codes of the United States. Consultant shall not utilize any protected patent, trademark, or copyright in performance of the Services unless Consultant has obtained proper permission and all releases and other necessary documents. If Consultant specifies or uses any material, equipment, process, or procedure, that is protected, Consultant shall disclose such patents, trademarks, and copyrights in Consultant's deliverables.
2. Consultant releases, indemnifies, and holds harmless Thornton, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions, or proceedings of any kind or nature whatsoever, including attorneys' fees and costs, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of Services under this Agreement which infringes upon any patent, trademark, or copyright protected by law.

**III. GENERAL CONDITIONS**

- A. **Indemnification.** To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless Thornton, its officers, agents and employees, from and against all liability, judgments, damages or losses which arise out of, result from, or are in any manner connected with the Services to be performed under this Agreement, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of Consultant, any subconsultant of Consultant, or any officer, employee or agent of Consultant, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and will pay to Thornton any expenses incurred by reason of such liability, judgments, damages or losses, including, but not limited to, court costs and reasonable attorneys' fees incurred in defending or investigating such claims. Such payments on behalf of Thornton shall be in addition to any and all other legal remedies available to Thornton and shall not be considered Thornton's exclusive remedy.
- B. **Insurance.** Consultant agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:
1. **Workers' Compensation Insurance.** Workers' Compensation Insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Statutory limits are required. Evidence of qualified self-insured status may be substituted.

2. Commercial General Liability Insurance **(MINIMUM LIMITS)**
- |    |   |             |
|----|---|-------------|
| a. | Each Occurrence                         | \$1,000,000 |
| b. | Products/Completed Operations Aggregate | \$1,000,000 |
| c. | Personal and Advertising Injury         | \$1,000,000 |
| d. | General Aggregate                       | \$1,000,000 |
- e. This policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of:
- i. Premises-operations;
  - ii. Products and completed operations including materials designed, furnished, and/or modified in any way by Consultant;
  - iii. Independent subcontractors or subconsultants;
  - iv. Contractual liability risk covering the indemnity obligations set forth in this Agreement; and
  - v. Where applicable, liability resulting from explosion, collapse, or underground exposures. Where applicable, liability resulting from explosion, collapse, or underground exposures.
- f. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.
3. Professional Liability Insurance **(MINIMUM LIMITS)**
- |    |            |             |
|----|------------|-------------|
| a. | Each Claim | \$1,000,000 |
| b. | Aggregate  | \$1,000,000 |
- c. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.
4. Automobile Liability Insurance. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Consultant's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.
5. Additional Insured. Consultant shall name Thornton, its officers, agents, and employees as additional insureds with respect to the commercial general liability and auto liability coverages required herein. A Certificate of Insurance shall be completed and forwarded, along with the Additional Insured Endorsements, to Thornton by Consultant's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and

minimum limits are in full force and effect and shall be subject to review and approval by Thornton **prior to commencement of any Services under this Agreement.**

6. Certificates of Insurance. The initial completed Certificates of Insurance and Additional Insured Endorsements shall include Consultant's e-mail address for future inquiries and updates, and shall be sent to:

City of Thornton  
Jim Jensen, Contracts Manager  
9500 Civic Center Drive  
Thornton, CO 80229-4326

Subsequent Certificates of Insurance, along with the renewal Additional Insured Endorsements, indicating renewal of coverage(s) shall be sent to Thornton's Risk Management office at [certificatesofinsurance@ThorntonCo.gov](mailto:certificatesofinsurance@ThorntonCo.gov) no later than thirty (30) days prior to the expiration date and shall indicate "Renewal COI" and the Project Number in the e-mail subject line.

Thornton further reserves the right to request and receive a certified copy of any policy and any endorsement. Consultant agrees to execute any and all documents necessary to allow Thornton access to any and all required insurance policies and endorsements.

7. Failure to Insure. Failure on the part of Consultant or a subconsultant to procure or maintain policies providing the required coverages, conditions, and minimum limits **shall constitute a material breach of Agreement upon which Thornton may immediately terminate this Agreement**, or at its discretion, Thornton may procure, or renew any such policy, or any extended reporting period, and may pay any and all premiums in connection therewith, and all monies so paid by Thornton shall be repaid by Consultant to Thornton upon demand, or Thornton may offset the cost of such premiums against any monies due or that become due to Consultant from Thornton.
8. Other Insurance Requirements.
- a. From time to time, Thornton, by mutual agreement with Consultant, may require Consultant to obtain other insurance with varying limits against other insurable hazards relating to the Services.
  - b. Consultant shall procure and maintain and shall cause any subconsultants to procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Thornton. All

coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- c. Every policy required above shall be primary insurance and any insurance carried by Thornton, its officers, or its employees shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under the policies required above.
- d. Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- e. All policies shall include a provision that the coverages afforded under the policies shall not be canceled or materially changed prior to the natural termination date until at least thirty (30) days prior written notice has been sent to Thornton. The Certificate(s) shall indicate the form used, if any, under which this provision is included.

C. **Governmental Immunity.** The Parties understand and agree that Thornton, its officers, and its employees are relying on, and do 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, C.R.S. 24-10-101 et seq., as from time to time may be amended, or otherwise available to Thornton, its agents, officers, or employees.

D. **Independent Contractor.**

- 1. It is understood and agreed by and between the Parties that the status of Consultant shall be that of an independent contractor and of a person retained on a contractual basis to perform professional and/or technical services for limited periods of time and it is not intended, nor shall it be construed, that Consultant is an employee or officer of Thornton under Chapter VII of the City Charter, or Chapter 54 of the City Code, or for any purpose whatsoever.
- 2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Consultant** or any employee, agent or subconsultant of Consultant **is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Consultant or some other entity besides Thornton, that Consultant is not entitled to**

**Workers' Compensation benefits from Thornton and that Consultant is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph are consistent with Consultant's insurance obligations which are set forth in this Agreement.

E. **Termination.**

1. **Termination for Convenience.**

- a. Thornton shall have the right to terminate this Agreement at any time upon seven (7) days advance written notice to Consultant ("Notice of Termination").
- b. Should Thornton terminate this Agreement for convenience, in accordance with subsection E.1.a above, Thornton shall pay Consultant for all Services previously authorized and properly completed prior to the date of termination set forth in the Notice of Termination. Consultant shall not be entitled to profit or overhead on uncompleted Services.
- c. In any event, the terms and conditions of this Agreement shall survive the termination date of the Agreement and continue until the Services are complete to Thornton's satisfaction.

2. **Termination of Cause.** Thornton shall have the right to terminate this Agreement immediately upon notice to Consultant if Consultant has materially breached the terms of this Agreement. In such event, Thornton shall pay Consultant for all Services previously authorized and completed prior to the date of termination in compliance with the terms of this Agreement and to Thornton's satisfaction, provided that there shall be no limitation of Thornton's right to exercise any and all available legal and equitable remedies.

3. **Termination for Non-Appropriation.** In the event that the Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year beyond the initial fiscal year hereof, Thornton may terminate this Agreement without penalty as of the end of the fiscal year for which funding was appropriated and shall be released of further obligations.

F. **Venue / Law / Statute Of Limitations.** This Agreement shall be governed by the laws of the State of Colorado, notwithstanding its choice of law principles. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to this Agreement or the Services asserted by Consultant against Thornton shall be

brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).

- G. **Notice.** Any notice or communication between Consultant and Thornton which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

**THORNTON:**

City of Thornton  
Attention: Contracts and Purchasing Director  
9500 Civic Center Drive  
Thornton, CO 80229-4326

**CONSULTANT:**

Company Name

Attention:

Address

- H. **Exhibits.** All documents marked and referred to as “Exhibits” in this Agreement are incorporated by this reference and are made a part of this Agreement.
- I. **Assignment of Agreement Not Permitted.** Consultant shall not be entitled to assign, pledge, or transfer its duties and rights, in whole or in part, under this Agreement, or any Work, Services, or its rights to any payment from Thornton without the prior written consent of Thornton, which Thornton may withhold in its sole discretion. Any approved assignee of Consultant’s interest in this Agreement, any Work or Services shall execute a written acknowledgement in a form satisfactory to Thornton expressly agreeing to be bound by all of its terms. No assignment shall relieve Consultant of primary liability under this Agreement. In this regard, Consultant understands that the performance of the scope of work is considered personal services under this Agreement.
- J. **General Warranty.** Consultant will faithfully perform the services required under this Agreement in accordance with standards of care, skill, training, diligence, and judgment provided by competent professionals who perform services of a similar nature as described in this Agreement.
- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of any such terms and conditions.

- L. **Inspection of Records.** In connection with the Services performed hereunder, Thornton and any of its duly authorized representatives shall have access to all of Consultant's and subconsultant's books, documents, papers, and any other records of Consultant and subconsultants that relate to the Services. Consultant further agrees that such records shall contain information concerning the personnel who performed the Services, the specific tasks they performed and the hours they worked. Consultant shall retain these records for three (3) years after termination of this Agreement.
  
- M. **Conflict of Interest.** Consultant agrees that it and its subsidiaries, affiliates, subconsultants, principals, or employees shall not engage in any transaction, activity, or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions, or Services of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of Thornton. Thornton, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Consultant written notice, which describes the conflict. Consultant shall have twenty (20) days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to Thornton.
  
- N. **Coordination of Services.** Consultant shall fully coordinate its Services with other consultants, contractors or other entities performing services on the Project that interfaces with or is affected in any way by Consultant's Services, and with any interested Thornton or other governmental agencies.
  
- O. **Non-Discrimination.** Consultant, its agents, employees, contractors, and subconsultants shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, gender, religion, or mental or physical disability in any policy or practice.
  
- P. **Advertising and Public Disclosures.** Consultant shall not include any reference to this Agreement or to the Services performed hereunder in any of its advertising or public relations materials without first obtaining the written approval from Thornton. Any oral presentation or written materials related to Consultant's Services shall include only presentation materials, Work product, designs, renderings, and technical data that have been accepted by Thornton. Thornton shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the transmittal of any information to officials of Thornton, including without limitation, the Mayor or member or members of City Council.
  
- Q. **Other Project Work.** Consultant and its subsidiaries and affiliates shall not bid upon or otherwise attempt to perform any other work associated with this Project.



Consultant shall require in its contracts with its subconsultants that they and their subsidiaries or affiliates shall not bid upon or otherwise attempt to perform any work associated with this Project other than the Services described in their written agreements unless specifically approved in writing by Thornton.

- R. **Time is of the Essence.** The Parties agree that in the performance of the terms and requirements of this Agreement by Consultant that time is of the essence.
- S. **Inurement.** The rights and obligations of the Parties set forth herein shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns permitted under this Agreement.
- T. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- U. **Joint Venture.** If Consultant is a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Consultant set forth in this Agreement.
- V. **Taxes and Licenses.** Consultant shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to the Services, and shall take out and keep current all required municipal, county, state, or federal licenses required to perform the Services. Consultant shall furnish Thornton, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. Consultant shall promptly pay, when due, all bills, debts, and obligations it incurs performing the Services and to allow no lien, mortgage, judgment, or execution to be filed against land, facilities, or improvements owned by Thornton.
- W. **Severability.** In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.
- X. **No Third Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Consultant and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Consultant that subconsultants and any other persons other than Thornton or Consultant receiving any benefits from this Agreement shall be deemed to be incidental, and not intended, beneficiaries only.
- Y. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner

specified by any applicable City regulation, rule, and/or ordinance. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

- Z. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained herein constitute the entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those that are expressly reserved herein, shall be valid unless they are contained in an instrument, which is executed by the Parties with the same formality as this Agreement.

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This Agreement is expressly subject to and will not become effective or binding on Thornton until it is fully approved and executed by Thornton.

APPROVED AS TO LEGAL FORM:  
William A. Tuthill III, Interim City Attorney

CITY OF THORNTON, COLORADO:

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ City Attorney

\_\_\_\_\_  
Kimberly Newhart  
Finance Director

ATTEST:

CITY OF THORNTON, COLORADO:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

\_\_\_\_\_  
Sean Saddler, PE  
Contracts and Purchasing Director

ATTEST FOR FIRM SIGNATURE: (If corporation)	INSERT FIRM NAME (ALL CAPS):
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title

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## **EXHIBIT A**

### **CONSULTANT’S GENERAL SCOPE OF SERVICES**

#### **PREPARATION OF THE 2022 LOCAL NATURAL HAZARD MITIGATION PLAN (HMP) UPDATE FOR THE CITIES OF THORNTON, NORTHGLENN, AND FEDERAL HEIGHTS, AN UPDATE TO THE 2017 THORNTON, FEDERAL HEIGHTS, AND NORTHGLENN NATURAL HAZARD MITIGATION PLAN**

##### **Introduction**

The proposed project will develop a natural hazard mitigation plan for the cities of Federal Heights, Northglenn, and Thornton. The plan will be an update for the 2017 Thornton, Federal Heights, and Northglenn Hazard Mitigation Plan, which was adopted in April 2017. The Plan will meet the requirements of the Disaster Mitigation Act of 2000, 44 CFR Part 201.6 and the most current FEMA “how-to” planning guidance. The plan will meet the most current FEMA Local Mitigation Plan Review Tool. In addition, the plan will be aligned with the 2018 State of Colorado Hazard Mitigation Plan.

The document produced as a result of this planning process will be titled as follows: “2022 Thornton, Northglenn, and Federal Heights Natural Hazard Mitigation Plan” (the “Plan”). The Plan will be prepared in time to be adopted by all three cities and approved by FEMA no later than April 19, 2022, so that there is no gap between the expiration of the 2017 Plan and the adoption of the 2022 Plan.

##### **Definitions**

“Assets” (or “Community Assets”) include anything that is important to the character, safety, and function of a community, and generally fall into the following categories: People, Economy, Built Environment, and Natural Environment.

“Cities” or “City” shall mean the three participating municipalities of Thornton, Northglenn, and Federal Heights, Colorado.

“Colorado Division of Homeland Security & Emergency Management” may be abbreviated as DHSEM.

“Conditional Letter of Map Revision” may be abbreviated CLOMR.

“Colorado Water Conservation Board” may be abbreviated as CWCB.

“Denver Regional Council of Governments” may be abbreviated DRCOG.

“Digital Flood Insurance Rate Map” may be abbreviated DFIRM.

“Department of Homeland Security” may be abbreviated DHS.

“Federal Emergency Management Agency” (FEMA) shall mean the Federal agency responsible for emergency planning and response within the US Department of Homeland Security.

“Flood Insurance Rate Map” may be abbreviated FIRM.

“Hazards United States” which may be abbreviated HAZUS, is a nationally applicable standardized methodology that contains models for estimating potential losses from earthquakes, floods, and hurricanes.

“Hazard Mitigation Plan” may be abbreviated “HMP”.

“Impact” shall mean the consequences or effects of a hazard on the community and its assets.

“Letter of Map Revision” may be abbreviated LOMR.

“Mitigation” shall mean sustained actions taken to reduce or eliminate long-term risk to life and property from hazards.

“Mitigation Strategy” shall mean a long-term blueprint for reducing potential losses identified in the Risk Assessment.

“National Earthquake Hazard Reduction Program” may be abbreviated NEHRP

“National Flood Insurance Program” (NFIP) is a program established by the National Flood Insurance Act of 1968 which enables insurance protection to be purchased from the federal government by property owners within participating communities.

“Natural Hazard” shall mean a source of harm or difficulty created by a meteorological, environmental, or geological event.

“Plan” shall mean the 2022 Thornton, Federal Heights, and Northglenn Hazard Mitigation Plan.

“Planning Area” shall mean all of the real property included within and addressed by the Plan, which shall include all of the incorporated and owned areas of the Cities, as well as land included within the growth area of each of the Cities, as identified by DRCOG. The Planning Area shall also include all land owned by any of the Cities in Weld and Larimer Counties. Thornton currently owns approximately 19,340 acres in those two counties.

“Planning Process” shall mean all of the processes and steps required to develop and adopt the Plan.

“Planning Team” shall mean the group of individuals whose responsibilities shall include the following: develop and review drafts of the Plan, draft the Mitigation Strategy, and submit the Final Plan for local adoption.

“Primary Plan Liaison” (PPL) shall be an individual staff member from Federal Heights and an individual staff member from Northglenn with specific responsibility for participating directly in the development and approval of the Plan. Primary Plan Liaisons shall interface directly and frequently with the Project Manager and the Consultant, serve as the primary representative of their respective City to the Planning Process, and serve as the primary conduit of information about the Planning Process with their respective City.

“Project Manager” (PM) shall be an individual staff member from the City of Thornton whose responsibility shall be to manage all aspects of the Planning Process including, but not limited to scheduling, Consultant coordination, communications, and delegation of responsibilities as appropriate.

“Risk” shall mean the potential for damage, loss, or other impacts created by the interaction of natural hazards with community assets.

“Risk Assessment” is a product or process that collects information and assigns values to risks for the purpose of informing priorities, developing or comparing courses of action, and informing decision making.

“Stakeholder Representative Group” (SRG) shall mean a defined group of individuals whose responsibilities shall be to remain engaged in the Planning Process, to provide information about the Planning Process to their respective peers, and inform the Planning Team in regard to issues, topics, or perspectives from different points of view within the Plan Area. Examples of SRG membership categories include, but are not limited to the following:

- |                                 |                          |
|---------------------------------|--------------------------|
| Homeowners’ Associations        | Cultural Organizations   |
| Emergency Response Agencies     | Non-Profit Organizations |
| Public Safety Organizations     | Residents                |
| Manufacturers                   | Other Interested Parties |
| Utility Service Providers       |                          |
| Faith-Based Organizations       |                          |
| Educational Institutions        |                          |
| Retail Business Owners/Managers |                          |
| Service Clubs                   |                          |
| Labor Unions                    |                          |
| Large Employers                 |                          |
| Government Agencies             |                          |

STAPLEE criteria:

- Social: Is the proposed strategy socially acceptable to the community?
- Technical: Will the proposed strategy work? Will it solve a problem independently?
- Administrative: Can the community implement the strategy? Is there someone to coordinate and lead the effort?
- Political: Is the strategy politically acceptable? Is there public support both to implement and to maintain the project?
- Legal: Is the community authorized to implement the proposed strategy? Is there a clear legal basis or precedent for this activity?
- Economic: What are the costs and benefits of this strategy? Does the cost seem reasonable for the size of the problem and the likely benefits? After implementation, will the benefits over time be more than the cost of the project?
- Environmental: Will the project have a positive impact on the environment?

“Threat” shall mean intentional actions of an adversary, such as threatened or actual chemical or biological attack or cyber event.

“Vulnerability” shall mean the characteristics of community assets that make them susceptible to damage from a given hazard.

### **Consultant Responsibilities and Expectations**

The Consultant will be responsible for the following Planning Process tasks:

1. Working closely with the Cities to determine the Planning Area.
2. Identifying the Data and Resources required to Draft and Implement the Plan.
3. Conduct Data Collection and Research as required for the Plan.
4. Building the Planning Team.
5. Creating and implementing an Outreach and Public Input Strategy.
6. Reviewing Community Capabilities.
7. Conducting a Risk Assessment.
8. Developing a Mitigation Strategy.
9. Developing a Plan to Keep the Plan Current.
10. Producing the Plan drafts and the final Plan document.
11. Guide and support the process of approval by FEMA, the State of Colorado, and adoption by each City, including making presentations to the elected officials of all three participating communities in the form of in-process project updates and in support of adoption of the final plan.



12. Amend the plan as necessary to achieve approval by FEMA and the State of Colorado and adoption by each City.
13. Document the Planning Process, which shall include generating records of all meetings and producing and maintaining a project website which contains all relevant documents, information, maps, tables, diagrams, images, meeting notices, meeting records, project calendar, and other appropriate information and documents.

The Consultant will work closely with the Planning Team on all phases of the Planning Process and with the Stakeholder Group as frequently as necessary and appropriate. The Consultant will ensure that representatives from participating Cities, local elected officials, local agencies providing services to the Planning Area, business, nonprofits, academia, neighboring counties or communities and the general public have an opportunity to be involved in the planning process. In addition, document all efforts to include these partners and their participation.

It will be important for the Consultant chosen to have demonstrated the following qualities:

1. A history of success in the development, drafting, and approval of FEMA-approved Local Natural Hazard Mitigation Plans and similar documents.
2. Exceptionally strong public engagement, information, and relations skills and experience.
3. The ability to explain complex topics, process, and phenomena in ways that are clear and understandable to the general public.
4. Extensive knowledge of geological and atmospheric science and their applicability to Local Hazard Mitigation Planning.
5. Extensive knowledge and experience with urban and regional planning.
6. Exceptional abilities in developing graphic images that portray complex phenomena in a clear, attractive, and understandable way.
7. Strong verbal presentation and meeting facilitation skills.
8. Strong and favorable references.

Specifically, the tasks assigned to the Consultant are as follows:

### **Task 1. Determining the Planning Area, Resources, and Participation Standards**

- A. Project Boundary Definition. Work closely with the Cities' staff members in determining the exact boundary of the Planning Area, which may or may not include the following categories of land in addition to all incorporated areas: designated growth areas, adjacent watersheds, drainage ways, or areas of natural vegetation, areas of influence in incorporated or unincorporated areas, land owned by the cities which is outside of their boundaries, and other areas outside of the existing jurisdictional boundaries.

- B. Assess Existing Resources. Identify and inventory all known organizations, individuals, partnerships, systems, programs, regulations, documents, and processes which currently exist that contribute to natural hazard mitigation within the Planning Area, and what role each one plays in doing so. Provide a written record of all resources and meetings (attendance, minutes, associated documents, etc.) for inclusion in the Plan.
  
- C. Participation Standards Establishment. Establish Minimum Standards for participation in the plan on the part of the Cities and Stakeholders. Document how all Cities met the minimum standard for participation as the Planning Process progresses.

## **Task 2. Build the Planning Team and Stakeholder Group**

- A. Planning Team Member Identification and Planning Team Formation. Working closely with the Project Manager, Primary Plan Liaisons, and other key staff members from the participating Cities, identify individuals to serve as members of the Planning Team. These should include, but not be limited to representatives of neighboring communities, local and regional agencies which are involved in hazard mitigation or play a role in development in the area, as well as business & non-profit representatives, and members of academic institutions in the area. Conduct an initial meeting and develop a schedule for future meetings of the Planning Team. The responsibility of the Planning Team is to develop and review drafts of the Plan, draft the Mitigation Strategy, and submit the Final Plan for local adoption. Provide a record of attendance, agenda items, and decisions and significant conclusions reached at all Planning Team Meetings.
  
- B. Stakeholder Representative Group (SRG) Development. Work with staff members from the Cities to identify a list of agencies, organizations, businesses, citizen's groups, and other interests within the Planning Area to invite and request representatives to serve as members of the Stakeholder Representative Group. The responsibilities of the SRG shall be to remain engaged in the Planning Process, to provide information about the Planning Process to their respective peers, inform the Planning Team regarding issues, topics, or perspectives from different points of view within the Plan Area, and to guide the development of the Plan in ways that will serve the Stakeholder organizations well during the term of the Plan. The Consultant will be required to provide a record of attendance, agenda items, decisions and significant conclusions reached at all Stakeholder Meetings.

It is important to ensure that the organizations invited to be part of the Stakeholder Representative Group include all service organizations that provide emergency response, public safety, and other critical services to the populations in any or all of the three cities are included – such as North Metro Fire, North Suburban Medical Center, Mile High Flood District, Tri-County Health Department, Metro Wastewater Reclamation District, Xcel Energy, United Power, the Adams County Sheriff’s Department, and others.

### **Task 3. Develop an Outreach and Public Input Strategy**

- A. Purpose. The purpose of the Outreach and Public Input Strategy is to invite and ensure public involvement and comment opportunities during the Plan development stage and prior to Plan approval. The Outreach and Public Input process and results will be documented and included in the Plan.

The Outreach and Public Input Strategy will ensure public involvement opportunities through a variety of tools, such as surveys, educational briefings, press releases, informational postings on local websites, community meetings, and public hearings.

- B. Develop and implement an Outreach and Public Input Strategy. The purpose of the Outreach and Public Input Strategy is to ensure that outreach efforts are effective at reaching three audiences:

1. Political and Staff Leadership within the Cities that are engaged in the Plan
2. Stakeholders within the Planning Area
3. The public living and/or working within the Planning Area

- C. Key Elements. The Outreach and Public Input Strategy will cover the following key elements:

1. Determining a detailed list of target categories within each of the three audiences that must be reached and ways to best accomplish this.
2. Determining the public outreach objectives and setting a detailed schedule to achieve them.
3. Identifying the most appropriate and effective outreach methods.

4. Developing a clear and consistent message that is in line with the values of the Cities served.
5. Establishing a system to collect, evaluate, and incorporate feedback collected from outreach activities into the plan.
6. Providing ample opportunity for Stakeholders, key City department representatives, the State of Colorado, and FEMA to review the final draft of the Plan prior to adoption.
7. Establishing a plan to ensure that public participation will continue during the Plan's implementation and maintenance within each of the Cities.
8. Compiling a written document outlining the Outreach and Public Input Strategy to be included in the final Plan.

D. Outreach and Public Input Strategy Requirements in the Plan. The Outreach and Public Input Strategy must also include descriptions of how the Plan will do the following things:

1. Inform the public and other readers about the overall approach to the Plan's development.
2. Serve as a permanent record of who was involved and how decisions were made in regard to the Plan.
3. Document how the Plan was prepared and who was involved from each City.
4. Identify and record all planning team members and stakeholders who were involved or were given the opportunity to be involved in the planning process, including all agencies and organizations and the individuals who were representing them.
5. Document how the public was given the chance to be involved in the Planning Process and how their feedback was incorporated into the Plan.

#### **Task 4. Conduct a Hazard Identification and Risk Assessment (HIRA).**

- A. The updated plan will include an assessment of the changes in development in hazard prone areas and how the vulnerability of each City has been affected. The updated plan will also include hazard events that have occurred and any other appropriate changes in data and analysis since the last plan was developed. The HIRA will include the following information, at a minimum:
1. Updated or new descriptions of the natural hazards (and additional human-caused or technological hazards if so desired) affecting each participating City, as needed. Analysis of how hazards vary across Cities, if applicable.
  2. Updated information on the location, extent, and previous occurrences of each hazard affecting each City.
  3. Updates on any hazard events that have occurred since the last plan date.
  4. Updated information on the probability of future hazard events.
  5. An overall summary for each City's vulnerability to each hazard. Rate the impact, for example high, medium, or low and explain the rating system used and the process followed to achieve the ranking.
  6. For each City, describe in general each hazard's impact on buildings, infrastructure, critical facilities, and the vulnerable population.
  7. Describe vulnerability in terms of types and numbers of National Flood Insurance Program (NFIP) insured properties, to include repetitive loss (RL) and severe repetitive loss (SRL) properties, located in the identified hazard areas. Include information regarding insured values and previous claims.
  8. Include the most current FEMA Flood Insurance Rate Map (FIRM) in plan, if available.
  9. Based on best available data, provide updated information on the vulnerability of existing and future buildings, infrastructure, and critical facilities for each City. Specify the types and numbers of buildings, infrastructure, and critical facilities.

10. Based on best available data, provide estimated potential dollar losses to vulnerable structures, describing the methodology used to prepare the estimate.
11. Based on best available data, describe vulnerability in terms of land use and development trends.
12. Based on best available data, analyze the economic impacts from potential hazards.
13. Based on best available data, describe how potential climate adaptation may impact each City's current and future vulnerability to specific hazards.
14. Document each City's existing capabilities (authorities, policies, programs, and resources) related to hazard mitigation, and its ability to expand on and improve these existing tools.
15. Include graphics and generate Geographic Information System (GIS) based maps that will illustrate the extent and location for each hazard, as well as other available information that include community and assets, within the defined planning area. Provide diagrams, tables, or other means of displaying relevant hazard-related information
16. Deliver in digital format (shapefile or Geodatabase) all GIS vector and raster data identified in each hazard map. Provide tables and diagrams with this deliverable requirement.

#### **Task 5. Develop a Mitigation Strategy**

- A. Each City will participate in the development of a mitigation strategy that reflects the results of the risk assessment and includes the following:
  1. Overall goals for reducing risk in the planning area. The participating Cities may also create objectives as part of the mitigation strategy. The plan will describe how the planning team reviewed, and if applicable, updated the goals and objectives.
  2. The plan update will describe mitigation actions in the current plan, identifying which are complete, incomplete (and why), deleted, or continued for each City.
  3. Specific mitigation actions and projects to reduce the impacts identified in the risk assessment, with an emphasis on new and existing buildings and infrastructure for each City. There must be new identifiable action items for each City seeking adoption of the plan.

4. A description of each City's participation in the NFIP and continued compliance with NFIP requirements, as appropriate.
5. A description of how the City will prioritize and implement the mitigation actions identified for each City.

#### **Task 6. Plan Adoption, Monitoring, and Evaluation**

- A. The plan will describe a process for adopting, monitoring, and evaluating this plan update, to include:
  1. The method and schedule for monitoring and evaluating the plan, including progress on action items, updates to the HIRA or mitigation goals and objectives, and adding new mitigation actions before the next plan update.
  2. The process to incorporate the mitigation plan into other local planning mechanisms for each City, and how the previous mitigation plan elements were incorporated into the same.
  3. A strategy for continued public participation.
- B. The City of Thornton will submit the draft plan and completed FEMA Local Mitigation Plan Review Tool to the DHSEM Mitigation Planning Team for review of compliance with FEMA HMP requirements. DHSEM will forward the plan to FEMA Region VIII for review and Approvable Pending Adoption (APA) status. Upon receiving APA status, all participating Cities will formally adopt the plan and provide their resolutions of adoption to DHSEM within three months. DHSEM will provide local resolutions to FEMA for final plan approval.

#### **Other Provisions**

- A. Consultant must maintain project management role until the Plan is approved by FEMA and the Cities.
- B. The schedule of the Planning Process must proceed as smoothly and diligently as possible.
- C. Consultant is responsible for changes required by DHSEM and FEMA to gain approvable pending adoption (APA) plan status. ***These changes may be required after final payment is made to the contractor in order to maximize the grant award, but final payment does not relieve the contractor of delivery of a FEMA approved plan.***

- D. Consultant will assist the Cities with completion of required quarterly financial and performance reports to DHSEM.
- E. A copy of the identified and updated Local Capabilities and Mitigation Actions will be provided to the DHSEM Mitigation Section in an appropriate format for inclusion in the State Hazard Mitigation Plan database.
- F. The use of best available data is expected in FEMA approved multi-hazard mitigation plans.
- G. The final version of the plan will include the FEMA approval packet and each City's adoption of the plan. Each participating city will approve the Plan including the appendix associated specifically with that city, not the other cities





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## EXHIBIT C

### SCHEDULE OF CHARGES

**BILLABLE HOURLY RATES AND ESTIMATED TOTAL COST:**

Category	Billable Hourly Rate		Estimated Total Hours		Estimated Total Cost
Project Executive		X		=	\$
Project Manager		X		=	\$
Project Engineer		X		=	\$
Design Engineer		X		=	\$
Engineering Tech		X		=	\$
CAD Tech		X		=	\$
Survey Party Chief		X		=	\$
Surveyor		X		=	\$
Clerical		X		=	\$
Other (list)		X		=	\$
<b>TOTAL</b>					<b>\$</b>

**(Use additional page if necessary.)**

**REIMBURSABLE EXPENSES:**

Reimbursable expenses include, but are not necessarily limited to, copying, printing, postage, local mileage, out of town travel and living expenses, courier expenses, owned or rented equipment costs, subconsultant costs, and subcontractor costs, if any.

All categories of reimbursable expenses for which Consultant will expect compensation are listed below. Categories of expenses not listed shall not be reimbursed separately and shall be considered to be included in Consultant’s personnel billable hourly rates, or if a NTE amount was converted to a lump sum fee, to be included in the lump sum fee.

Listed expenses incurred by Consultant from outside vendors such as printers, courier services, rental equipment, subconsultants, or subcontractors will be reimbursed at cost without further mark up. Consultant’s management of outside subconsultants and or subcontractors will be reimbursed at the Billable Hourly Rates for Consultant’s personnel involved in the management and not through a percent fee mark up. Detailed documentation (vendor invoices) must be supplied for an outside expense to be eligible for reimbursement.

Expenses incurred by Consultant from in-house operations, such as in-house printing, copying, Consultant owned equipment, etc., will be reimbursed at the rates indicated below. Detailed unit prices for all in-house expenses for which Consultant will expect compensation are listed below. Vehicle mileage in connection with the performance of the Services will be reimbursed at the rate currently allowable under IRS rules for passenger vehicles, and at rates herein defined for specialty vehicles, such as survey trucks.

**REIMBURSABLE EXPENSE CATEGORIES AND RATES:**

<b>In-house Expense Category</b>	<b>UOM</b>	<b>Rate</b>		<b>Outside Expense Category</b>	<b>UOM</b>	<b>Rate</b>
Passenger Vehicle	Mile	IRS		Postage	LS	Cost
Copying ___" x ___" BW				Courier	LS	Cost
Copying ___" x ___" Color				Subconsultants	LS	Cost
Printing ___" x ___" BW				Subcontractors	LS	Cost
Printing ___" x ___" Color				Rental Equipment	LS	Cost
_____ Equipment						

Use additional sheet if necessary

**EXHIBIT D**

**AFFIDAVIT**

I, \_\_\_\_\_, swear or affirm under penalty of perjury under the laws of the State of Colorado that:

**Check Only One**

- I am a United States citizen, **OR**
- I am a Permanent Resident of the United States, **OR**
- I am lawfully present in the United States pursuant to federal law.

I understand that the law requires this sworn statement because I will be performing Services under a public contract, which is a public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn Affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I, \_\_\_\_\_, City of Thornton employee, observed the identification supplied by the above named individual and affirm that it appears to be valid and is of the following form:

**CHECK ONLY ONE**

- Colorado Driver's License or state issued identification card.
- United States Military or Military Dependent's Card.
- Merchant Mariner Card.
- Native American Tribal Document.
- Valid Driver's License or state issued identification card bearing applicant's photograph issued by one of the following (all states are not listed here; only those that verify lawful presence): Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas,

New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia, and Wyoming.

- \_\_\_\_ Certificate verifying naturalized status issued by an authorized agency of the United States bearing Applicant's intact photograph impressed with the raised embossed seal of the issuing agency.
  
- \_\_\_\_ Certificate verifying United States citizenship issued by an authorized agency of the United States bearing Applicant's intact photograph impressed with the raised embossed seal of the issuing agency.
  
- \_\_\_\_ Valid immigration documents demonstrating Lawful Presence and verified through the Systematic Alien Verification for Entitlements, administered by the United States Citizenship and Immigration Services of the Department of Homeland Security. Valid Immigration documents are as follows:
  - Unexpired Foreign Passport bearing an unexpired "Processed for I-551" stamp or with an attached unexpired "Temporary I-551" visa.
  
  - Unexpired Foreign Passport accompanied by an "I-94" indicating a specific future "until" date.
  
  - "I-94" with refugee or asylum status.
  
  - Unexpired "Resident Alien" card, "Permanent Resident" card, "Temporary Resident" card, or "Employment Authorization" card.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## INTERGOVERNMENTAL AGREEMENT

C.D. No. 2021-048

## R E S O L U T I O N

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONG THE CITIES OF THORNTON, FEDERAL HEIGHTS, AND NORTHGLENN TO CONDUCT A LOCAL NATURAL HAZARD MITIGATION PLAN.

WHEREAS, the City, the City of Northglenn (Northglenn), and the City of Federal Heights (Federal Heights) wish to enter into an Intergovernmental Agreement (IGA); and

WHEREAS, having a Local Natural Hazard Mitigation Plan (Plan) in place increases eligibility for Federal and/or State funding of natural hazard prevention measures and, in the case of a natural disaster occurrence, recovery measures; and

WHEREAS, an up-to-date Plan provides each City with critical information about threats to its population and physical assets, vulnerabilities to multiple kinds of natural hazards, and key recommendations by which such concerns may be mitigated; and

WHEREAS, it serves the best interests of the City, Federal Heights, and Northglenn (collectively, Cities) to work cooperatively in regard to the development, drafting, and adoption of a Plan; and

WHEREAS, costs associated with this Plan will be funded in part by a Federal grant, with the remaining funding obligation shared proportionally based on the population of each of the Cities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the IGA attached hereto and incorporated herein is hereby approved.
2. That the City Manager is hereby authorized to sign, and the City Clerk to attest, the IGA.
3. That the IGA shall not be effective until executed by all Cities.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on April 13, 2021.

CITY OF THORNTON, COLORADO



Jan Kulmann, Mayor

ATTEST:



Kristen N. Rosenbaum, City Clerk

**RESOLUTION NO. 21-11**

**INTRODUCED BY:  
Mayor Pro Tem Thomas  
Council Member Peterson**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS,  
COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITIES OF THORNTON, NORTHGLENN AND FEDERAL HEIGHTS TO  
CONDUCT A LOCAL NATURAL HAZARD MITIGATION PLAN**

WHEREAS, the City of Thornton ("Thornton"), the City of Northglenn ("Northglenn"), and the City of Federal Heights ("Federal Heights") (collectively, the "Cities") desire to enter into an Intergovernmental Agreement to conduct a Local Hazard Mitigation Plan ("Plan"); and

WHEREAS, having such a Plan improves municipalities eligibility for federal and/or state funding of natural hazard prevention measures and, in the case of a natural disaster occurrence, recovery measures; and

WHEREAS, an up-to-date Plan provides the Cities with critical information about threats to their population and physical assets, vulnerabilities to multiple kinds of natural hazards, and key recommendations by which such concerns may be mitigated; and


WHEREAS, the Cities shall work cooperatively in regard to the development, drafting, and adoption of the Plan; and

WHEREAS, costs associated with the Plan will be funded in part by a grant from the Federal Government, with the remaining funding obligation shared proportionally based on the population of each of the Cities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

The Intergovernmental Agreement Between the Cities of Thornton, Northglenn, and Federal Heights to Conduct a Local Natural Hazard Mitigation Plan is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Intergovernmental Agreement on behalf of the City.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO, THE 16<sup>th</sup> DAY OF March 2021.

  
Linda S. Mentoya, Mayor



ATTEST:



\_\_\_\_\_  
Patti K. Lowell, CMC, City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
William P. Hayashi, City Attorney

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-34  
Series of 2021

21-33  
Series of 2021

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF THORNTON, FEDERAL HEIGHTS, AND NORTHGLENN FOR THE DRAFTING, FUNDING, AND ADOPTION OF A LOCAL NATURAL HAZARD MITIGATION PLAN

WHEREAS, under the Federal Disaster Mitigation Act of 2000, an adopted natural hazards plan is required as a condition of future funding for mitigation projects under Federal Emergency Management Agency (FEMA) pre- and post-disaster grant programs;

WHEREAS, the cities of Thornton, Federal Heights, and Northglenn (the "Cities") worked cooperatively to prepare the 2017 Local Natural Hazard Mitigation Plan, and the Cities now desire to enter into an Intergovernmental Agreement regarding the drafting, funding, and adoption of an updated Local Natural Hazard Mitigation Plan (the "Plan");

WHEREAS, the updated Plan will provide the Cities with critical information about threats to their population and physical assets, vulnerabilities to multiple kinds of natural hazards, and key recommendations by which such concerns may be mitigated; and

WHEREAS, costs associated with the updated Plan will be funded in part by a grant from the federal government with the remaining funding obligation shared proportionally based on the population of each of the Cities.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the cities of Thornton, Federal Heights, and Northglenn for the drafting, funding, and adoption of a Local Natural Hazard Mitigation Plan, attached hereto as Exhibit 1, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn, Colorado.


DATED at Northglenn, Colorado, this 22<sup>nd</sup> day of March, 2021.

  
MEREDITH LEIGHTY  
Mayor

ATTEST:

  
\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF  
THORNTON, FEDERAL HEIGHTS, AND NORTHGLENN FOR THE DRAFTING,  
FUNDING, AND ADOPTION OF A LOCAL NATURAL HAZARD MITIGATION PLAN**

This Intergovernmental Agreement entered into this \_\_\_ day of \_\_\_\_\_, 2021 entered into by and between the City of Thornton located at 9500 Civic Center Drive, Thornton, CO 80229 (“Thornton”), the City of Federal Heights, located at 2380 W. 90th Ave. Federal Heights, CO 80260 (Federal Heights), and the City of Northglenn located at 11701 Community Center Drive, Northglenn, CO 80233 (“Northglenn”), or collectively the (“Cities”)

**WITNESSETH**

WHEREAS, the Cities desire to work cooperatively toward the development, drafting, and adoption of a Local Natural Hazard Mitigation Plan (the “Plan”); and

WHEREAS, Thornton has secured grant funding on behalf of the Cities for the purpose of funding the services of a consultant to conduct the Plan; and

WHEREAS, the grant will pay up to 75% of the total \$70,000 anticipated cost of the Plan, or \$52,500; and

WHEREAS, the Cities will be responsible to pay the remaining approximate \$17,500 in costs, which shall be shared roughly in proportion to the populations (2018) of the respective Cities, which is as follows:

<u>City</u>	<u>Population</u>	<u>Percent</u>	<u>Amount</u>
Thornton	139,430	73%	\$12,775
Northglenn	38,918	20%	\$3,500
Federal Heights	12,695	7%	\$1,225

WHEREAS, Thornton will invoice Northglenn and Federal Heights for their proportionate shares of the costs; and

WHEREAS, the Cities agree that Thornton will be the lead agency in coordinating the efforts associated with managing and developing the Plan, which will include the following responsibilities:

- managing the grant
- drafting and issuing a request for proposals (RFP)
- contracting with a consultant
- paying the consultant
- collecting grant funds
- collecting contributions from Northglenn and Federal Heights
- managing the planning process; and

WHEREAS, as the lead agency, Thornton will coordinate and cooperate with Northglenn and Federal Heights in regard to the development and drafting of the Plan,

managing the consultant, scheduling and conducting all required meetings, and other necessary processes; and

WHEREAS, Northglenn and Federal Heights will do the following:

- Cooperate with Thornton in regard to scheduling meetings
- Assign appropriate staff members to participate in meetings
- Provide all appropriate and available background information in support of the Plan
- Provide meeting space as necessary for meetings
- Pay Thornton invoices within 30 days
- Work diligently, in good faith, and in a timely manner toward the completion of the Plan.

NOW THEREFORE in consideration of the terms and conditions contained herein, the Cities hereto agree as follows:

1. PROJECT MANAGEMENT

Thornton shall manage the Project. Northglenn and Federal Heights shall provide to Thornton or to the consultant all information related to the Project upon request. The Project shall be conducted and the Plan shall be drafted in accordance with the specifications provided by the Federal Emergency Management Agency (FEMA) and the State of Colorado, and in the best interests of the Cities.

C. Project Completion

The Cities agree and acknowledge that it is essential to each City that the entire Plan be completed, which shall include approval by FEMA, the State of Colorado, and each City. No City shall have the right to stop or significantly delay the development, drafting, or approval of the Plan without the written consent of the other Cities, except in the event of an emergency.

D. Contracts Documents

Upon completion of the Scope of Work, Thornton shall develop the contract documents for the Plan. The Cities acknowledge that within the Plan there are areas under the jurisdiction of each of the Cities. The Cities agree that the Plan shall be drafted in accordance with the standards and specifications provided by FEMA and the State of Colorado, and in the best interest of each of the Cities.

The contract documents shall include a Scope of Work for each of four categories:

1. work to be completed for the Cities,
2. work to be completed for Thornton,
3. work to be completed for Northglenn, and
4. work to be completed for Federal Heights.

Upon finalization of the contract documents, Thornton shall issue a Request for Proposals (RFP). Following receipt of the consultant Proposals in response to the RFP, Thornton

shall assemble a team of individuals, including representatives of both Northglenn and Federal Heights, to serve on a selection committee. The selection committee will evaluate the proposals based on the criteria indicated in the RFP and recommend a consultant proposal for award. Thornton shall award, execute and administer the contract for the Plan in accordance with Thornton's policies and procedures. Northglenn and Federal Heights shall be specifically listed as a beneficiaries of all warranties and bonds provided for in the contract documents.

E. Project Funding and Invoices

The cost of the Plan is not anticipated to exceed \$70,000. Thornton will bill Northglenn and Federal Heights for their respective shares, with Northglenn's share and Federal Heights' share due within 30 days to Thornton.

Each city may choose to contract for additional services with the consultant at their own expense independent of the other two cities and with no impact on grant funding.

F. Project Manager and Staff Coordinators

Thornton shall designate a Project Manager who shall coordinate the Project on behalf of the Cities. Northglenn and Federal Heights shall each designate a Staff Coordinator who shall serve as the primary point of contact for both the Project Manager as well as the consultant.

G. Change Orders

The Project Manager and Staff Coordinators shall meet in person or electronically and communicate via telephone conference, video conference, and electronic mail as necessary to review all Project change orders. The Thornton City Manager may approve change orders up to \$10,000 for work done exclusively for Thornton and paid for by Thornton, with no impact on grant funding or the financial obligations of the other two cities.

The Parties agree that Northglenn and Federal Heights have the right to challenge or dispute any change order that solely affects work provided to their respective cities. The Project Manager shall use all best efforts to resolve the disputed change order to avoid any delay in the work. In the event the Project Manager and Staff Coordinators are unable to resolve the disputed change order, the issue will be resolved in accordance with the dispute resolution provisions provided in Paragraph (3D) herein.

3. GENERAL TERMS

A. Several Liability

The Cities acknowledge that pursuant to this Agreement each is separately and severally liable for that portion of the work performed for each City.

B. Maintenance

Maintenance of the Plan shall be performed in accordance with the Agreement as defined in the third recital herein.

C. Term

This Agreement shall terminate upon approval of the Plan by FEMA, the State of Colorado, and by each City. Each City retains the right to terminate its participation in the Plan prior to completion at any time by written notification to the other two cities.

D. Dispute Resolution

In the event of any disagreement associated with the Project and prior to the commencement of any formal proceedings, the Parties shall continue performance as set forth in this Agreement and the Project Manager and Staff Coordinators in good faith shall attempt to resolve the dispute. In the event the Project Manager and Staff Coordinators are unable to reach agreement and one of the individuals serving as Project Manager or Staff Coordinator concludes that a good faith amicable resolution through continued negotiation of the matter at issue does not appear likely, such individual shall notify the others in writing.

In the event the Parties reach such an impasse relating to a decision or issue that threatens to significantly delay the Project, within five (5) business days following such notice, the appropriate department heads from each City shall make an interim decision and/or determination that will allow the Project to proceed according to the Project's schedule. If an interim decision cannot be mutually agreed upon, the City Manager's of each city shall meet within five business days to resolve such decisions or issues.

While each City agrees to abide by said interim decision until the Project has been substantially completed, it shall do so under a complete reservation of its rights and without prejudice to any claims it may have against the other City or others.

E. LITIGATION

Each City which is a party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

F. NOTICE

Any notice required 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 below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Thornton  
City Manager  
9500 Civic Center Drive  
Thornton, CO 80229

City of Northglenn  
City Manager  
11701 Community Center Drive  
Northglenn, CO 80233

City of Federal Heights  
City Manager  
2380 W. 90th Ave.  
Federal Heights, CO 80260

#### G. INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the Cities and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Cities.

#### H. TERMINATION OF AGREEMENT

This Agreement may be terminated in writing by any of the Cities, but only if (1) there are no contingent, outstanding contracts and (2) the competitive proposal process results in a project cost that exceeds the amount of funds set forth in Section 2(E) of this agreement. All costs associated with the cancellation, of any Project contracts, or portion thereof, shall be paid equally by the Parties.

#### I. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

#### J. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

#### K. WAIVER

A waiver by any Party of a 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.

#### L. PARAGRAPH CAPTIONS

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this Agreement.


#### M. GOVERNMENTAL IMMUNITY



The Parties acknowledge that each Party, their officers and employees, are relying on, and do 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, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Cities here have executed this Agreement to be effective as of the date first above written.

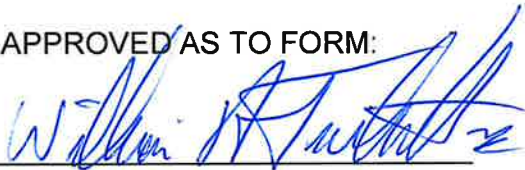
CITY OF THORNTON

  
\_\_\_\_\_  
Kevin S. Woods, City Manager

ATTEST:

  
\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
William A. Tuthill, III, Interim City Attorney

CITY OF NORTHGLENN

\_\_\_\_\_  
Mayor

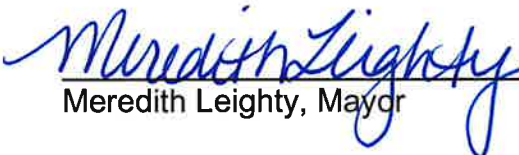
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney


CITY OF NORTHGLENN

  
Meredith Leighty, Mayor

ATTEST:

  
Johanna Small, City Clerk

APPROVED AS TO FORM:

  
Corey Y. Hoffmann, City Attorney

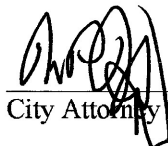
CITY OF FEDERAL HEIGHTS

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

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## EXHIBIT F

### REQUIRED CONTRACT PROVISION FEDERAL AID CONTRACTS

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- II. Remedies
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- VII. Compliance with the Contract Work Hours and Safety Standards Act
- VIII. Access to Records
- IX. Retention of Records
- X. Compliance with the Clean Air Act and Clean Water Act
- XI. Energy Efficiency
- XII. Suspension and Debarment
- XIII. Disadvantaged Business Enterprise Participation (DBE)
- XIV. Non-segregated Facilities
- XV. Procurement of Recovered Materials
- XVI. Force Majeure
- XVII. Byrd Anti-Lobbying Amendment
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## GENERAL

- A. The term “Contractor” mentioned in this section shall also apply to any supplier, vendor, service provider, etc.
- B. Provisions listed in Exhibit F supersede any requirements listed in the Exhibit D of Exhibit E.
- C. These contract provisions shall apply to all work performed on the Contract by the Contractor’s own organization and with the assistance of workers under the Contractor’s immediate supervision and to all work performed on the Contract by piecework, station work, or by subcontract.
- D. Except as otherwise provided for in each section, the Contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
- E. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the Contract.
- F. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
- Section I, paragraph B;
  - Section IV, paragraphs 1, 2, 3, 4, and 7; and
  - Section V, paragraph A.
- F. Disputes arising out of the labor standards provisions (except paragraph E) of Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the DOL, or the Contractor’s employees or their representatives.
- G. **Selection of Labor:** During the performance of this Contract, the Contractor shall not:
1. Discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable), or

2. Employ convict labor for any purpose within the limits of the Project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. REMEDIES (Applies to all contracts in excess of \$150,000).**

In addition to any other remedy available to the City of Thornton as provided in this Contract, the City of Thornton may, in its sole discretion, take any action in accordance with applicable law to protect the interests of the City of Thornton in the event the Contractor fails to comply with any requirement specified in this Contract.

**III. TERMINATION FOR CAUSE**

- A. If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the work within this time, the City of Thornton may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the City of Thornton may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plans on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City of Thornton resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Thornton in completing the work.
- B. The Contractor's right to proceed shall not be terminated, nor the Contractor charged with damages under this clause, if:
  1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:
    - a. Acts of God or of the public enemy;
    - b. Acts of the City of Thornton in either its sovereign or contractual capacity;
    - c. Acts of another Contractor in the performance of a contract with the City of Thornton;
    - d. Fires;
    - e. Floods;
    - f. Epidemics;
    - g. Quarantine restrictions;
    - h. Strikes;
    - i. Freight embargoes;
    - j. Unusually severe weather; or

- k. Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers.
- 2. The Contractor, within 10 days from the beginning of any delay (unless extended by the City of Thornton), notifies the City of Thornton in writing of the causes of delay. The City of Thornton shall ascertain the facts and the extent of delay. If, in the judgment of the City of Thornton, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the City of Thornton shall be final and conclusive on the parties.
- C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Thornton.
- D. The rights and remedies of the City of Thornton in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **IV. TERMINATION FOR CONVENIENCE**

- A. The City of Thornton may terminate performance of work under this Contract in whole or, from time to time, in part, if the City of Thornton determines that a termination is in the City of Thornton's interest. The City of Thornton shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the City of Thornton, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - 1. Stop work as specified in the Notice of Termination.
  - 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract, if any.
  - 3. Terminate all subcontracts to the extent they relate to the work terminated.
  - 4. Assign to the City of Thornton all right, title, and interest of the Contractor under the subcontracts terminated, in which case the City



of Thornton shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

5. With approval or ratification to the extent required by the City of Thornton, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  6. Complete performance of any work not terminated.
  7. Take any action that may be necessary, or that the City of Thornton may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and the City of Thornton has or may acquire an interest.
- C. After termination, the Contractor shall submit a termination settlement proposal to the City of Thornton in the form and with the certification prescribed by the City of Thornton. The Contractor shall submit the proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by the City of Thornton upon written request of the Contractor within this six (6) month period. If the Contractor fails to submit the proposal within the time allowed, the City of Thornton may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- D. Subject to paragraph (C) of this clause, the Contractor and the City of Thornton may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The agreed amount, however, whether under this paragraph (D) may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The Contract shall be modified, and the Contractor paid the agreed amount.
- E. If the Contractor and the City of Thornton fail to agree on the whole amount to be paid because of the termination of work, the City of Thornton shall pay the Contractor the reasonable amounts determined by the City of Thornton to be due and owing to the Contractor.

**V. EQUAL EMPLOYMENT OPPORTUNITY - COMPLIANCE WITH EXECUTIVE ORDER 11246**

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed,

and that employees are treated fairly during employment without regard to their race, color, religion, sex, 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- G. In the event of the Contractor noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**VI. COMPLIANCE WITH COPELAND ANTI-KICKBACK ACT**

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as federal grants may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the Contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. §5.12.

**VII. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of

laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of (40) forty hours in such workweek.

- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each Calendar Day on which such individual was required or permitted to work in excess of the standard workweek of (40) forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City of Thornton shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

## **VIII. ACCESS TO RECORDS**

The following access to records requirements apply to this Contract:

- A. The Contractor agrees to provide the City of Thornton, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to provide the Grant Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

**IX. RETENTION OF RECORDS**

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the City of Thornton, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**X. COMPLIANCE WITH THE CLEAN AIR ACT AND CLEAN WATER ACT (Applies to all contracts in excess of \$100,000)**

Clean Air Act

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.
- B. The Contractor agrees to report each violation to the City of Thornton and understands and agrees that the City of Thornton will, in turn, report each violation as required to assure notification to the State of Colorado and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with Federal assistance provided by the Water SMART Grant.

Federal Water Pollution Control Act

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.
- B. The Contractor agrees to report each violation to the City of Thornton and understands and agrees that the City of Thornton will, in turn, report each

violation as required to assure notification to the State of Colorado and the appropriate Environmental Protection Agency Regional Office.

- C. The Contractor agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with Federal assistance provided by the Water SMART Grant.

**XI. ENERGY EFFICIENCY**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**XII. SUSPENSION AND DEBARMENT**

- A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- B. The Contractor must comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the City of Thornton. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Thornton, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment.
- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**XIII. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (DBE)**

- A. It is the policy of the federal grant that DBE firms as defined in 49 C.F.R. Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thornton obtained a grant for part of the cost of designing and constructing the Project. In order to qualify for grant funds, Thornton, the Contractor, and its Subcontractors must comply with the FAR regulations covering the participation of small

business firms owned or controlled by socially and economically disadvantaged individuals which is defined in 49 C.F.R. Part 23.

- B. The proposing firm shall make good faith efforts, as defined in Appendix A of 49 C.F.R. Part 23, to subcontract a reasonable percentage of the work in this agreement with DBE firms. In the event that the successful proposing firm for this solicitation qualifies as a DBE, the Agreement goal shall be deemed to have been met. Individuals who are reputedly presumed to be socially and economically disadvantaged include Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A proposing firm which fails to meet the goal or which cannot demonstrate that it made good faith efforts to meet that goal will be considered non responsive to these Request for Proposal Instructions. A current list of certified DBE firms which will be accepted for the purposes of this requirement may be obtained from the State of Colorado Department of Transportation (State).
- C. Within five (5) consecutive Calendar Days of the deadline date for submitting Proposals, the proposing firms shall submit a Letter of Intent for each DBE listed in their proposal as a Subcontractor. Each Letter of Intent shall be accompanied by either the Subcontractor's certification letter from the State or by a copy of its application for certification which has been submitted to the State.
- D. If any proposing firm does not meet the Project goal set forth above, it shall submit documents demonstrating that it made good faith efforts to achieve the goal. A copy of Appendix A to 49 C.F.R. 23.45 entitled "Guidance Concerning Good Faith Efforts" may be obtained from the State.
- E. In order to maximize business opportunities for DBE firms, proposing firms are urged to meet the DBE goal by subcontracting with as many DBE firms as possible. Thornton strongly discourages proposing firms from requiring exclusive dealing commitments from DBE firms which would prevent them from being considered as Subcontractors by other proposing firms.

**XIV. NONSEGREGATED FACILITIES (Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)**

- A. By submission of this bid, the execution of this Contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no

employee will be denied access to adequate facilities on the basis of sex or disability.

- B. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- C. The Contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of ten thousand dollars (\$10,000) or more and that it will retain such certifications in its files.

**XV. PROCUREMENT OF RECOVERED MATERIALS**

A non-Federal Entity that is a state agency or an agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired by the preceding fiscal year exceeded ten thousand dollars (\$10,000); procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**XVI. FORCE MAJEURE**

Force Majeure. A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

**XVII. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors who apply or bid for an award of one hundred thousand dollars (\$100,000) or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or



attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**XVIII. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, AND FLAGS**

Contractor shall not use DHS seal(s), logo, crests, or reproductions of flags or likenesses of DHS agency officials without specific preapproval.

**XIX. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that Water SMART grant financial assistance will be used to fund this contract only. Contractor will comply with all applicable federal law, regulations, executive orders, policies, procedures and directives.

**XX. NO OBLIGATION BY FEDERAL GOVERNMENT.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**XXI. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS.**

The contractor acknowledges that 31 U.S.C Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**XXII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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### VIII. EXHIBIT 3

## REFERENCE AUTHORIZATION AND RELEASE FORM

By: \_\_\_\_\_, A Corporation  
 \_\_\_\_\_, A Partnership whose address is:  
 \_\_\_\_\_, An Individual  
 (Proposing firm)

Proposing Firm has submitted a sealed proposal to the City of Thornton (Thornton) for Professional Consulting Services for **Natural Hazard Mitigation Plan (HMP), Project No. 163-21** (Project).

Proposing Firm hereby authorizes Thornton to perform such investigation of proposing firm as it deems necessary to verify the qualifications, responsibility, trustworthiness and financial ability of Proposing Firm. By its signature hereon, the proposing firm authorizes Thornton to obtain reference information concerning the proposing firm. Proposing Firm further agrees to release and hold Thornton and the firm or agency providing reference information harmless from all liability resulting from providing the requested reference information to Thornton about the Proposing Firm.

Proposing Firm further authorizes Thornton to discuss and release reference information regarding Proposing Firm's performance as it will relate to this upcoming Project upon receiving a request for such information. Proposing Firm agrees to release and hold Thornton harmless from all liability associated with releasing such information about Proposing Firm.

Proposing Firm further waives its right to receive copies of reference information provided to Thornton. By signing below, Proposing Firm agrees with the terms of this Reference Authorization and Release and authorizes Thornton to obtain reference information concerning Proposing Firm.

A copy or facsimile of this executed Reference Authorization and Release Form may be used with the same effectiveness as an original.

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

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title