

CITY OF THORNTON

REQUEST FOR PROPOSALS

FOR

PROFESSIONAL ENGINEERING SERVICES

RESERVOIR ENGINEERING SERVICES

PROJECT NO. 333-21

OCTOBER 2021

THIS PAGE INTENTIONALLY LEFT BLANK

II. INDEX OF CONTENTS

- I. TITLE PAGE
- II. INDEX OF CONTENTS
- III. NOTICE REQUEST FOR PROPOSALS
- IV. PROPOSAL INSTRUCTIONS AND INFORMATION
- V. PROPOSAL PREPARATION
- VI. EXHIBIT 1 ACCEPTANCE OF CONDITIONS STATEMENT
- VII. EXHIBIT 2 PROFESSIONAL SERVICE AGREEMENT
 - EXHIBIT A CONSULTANT'S SCOPE OF SERVICES
 - EXHIBIT B CONSULTANT'S PERSONNEL AND SUBCONSULTANTS LISTING
 - EXHIBIT C SCHEDULE OF CHARGES
 - EXHIBIT D AFFIDAVIT
- VIII. EXHIBIT 3 REFERENCE AUTHORIZATION AND RELEASE FORM

THIS PAGE INTENTIONALLY LEFT BLANK

III. NOTICE

REQUEST FOR PROPOSALS

The City of Thornton, CO (“Thornton”) respectfully requests separate sealed Proposals for Professional Engineering Services for **Reservoir Engineering Services, Project No. 333-21** (hereinafter referred to as “Project”). Proposals will be received until **4:30 p.m.** local time, **Thursday, November 18, 2021**, in the Contract Administration Office, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326.

Approved Methods for Submission of Proposals:

Electronic proposals shall be submitted/ uploaded to BidnetDirect.com website in response to this solicitation;

Or Physical proposals may be submitted by mail or courier service;

Or Physical Proposals will be received in the Contract Administration Office, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326.

Late Proposals will not be accepted under any circumstances.

Project Description: Consultant to provide on-call, as needed, Professional Engineering Services for Thornton’s reservoir water resources.

The Agreement shall terminate on December 31, 2031, unless sooner terminated by Thornton’s issuance of a Termination Notice. Upon request, rates and charges may be adjusted annually for subsequent one (1) year terms on the anniversary date of the Agreement provided; however, that increases in rates and charges may not exceed the inflation rate defined by the current Denver Boulder Greeley CPI as published by the Bureau of Labor Statistics

Thornton utilizes the BidNet Direct System at 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 Pre-Proposal Conference to discuss the Project(s) will be held at **1:30 pm, Monday, November 8, 2021**, via teleconference. Please email the Contract Administrator at Patrick.hinterberger@thorntonco.gov for a link to the meeting. If possible, please hold all questions concerning this RFP until that 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, Reservoir Engineering Services, Project No. 333-21"**. 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, Reservoir Engineering Services, Project No. 333-21"**.

Proposals submitted electronically shall be uploaded to the Vendor's portal through the BidnetDirect.com website and shall follow the process/guidelines identified on the website and this solicitation.

All questions shall be directed in writing to Patrick Hinterberger, Sr. Contract Administrator, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax 303-538-7556, or e-mail – patrick.hinterberger@ThorntonCo.gov, 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays.

Date First Published: Tuesday, October 26, 2021

Published at: BidNet Direct, COT Website, and the Contracts & Purchasing Bulletin Board.

BY: 

Jim Jensen
Contracts Manager

IV. PROPOSAL INSTRUCTIONS AND INFORMATION

Thornton is soliciting written Proposals from qualified firms for Professional Engineering Services for **Reservoir Engineering Services, Project No. 333-21**. 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: Patrick Hinterberger, Sr. Contract Administrator
9500 Civic Center Drive
Thornton, CO 80229-4326
Fax: 303-538-7556
E-mail: Patrick.hinterberger@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 Sr. Contract Administrator. 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 (10th) 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 located at Thornton City Hall, City of Thornton, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326 or submitted via the BidnetDirect.com vendor portal **prior to 4:30 p.m. local time on Thursday, November 18, 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, Reservoir Engineering Services, Project No. 333-21**", 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, Reservoir Engineering Services, Project No. 333-21**", 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 sixty (60) 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

Proposals 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 Services and the Scope of Services 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 billing structure and rates.

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.

THIS PAGE INTENTIONALLY LEFT BLANK

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. If your firm is submitting a physical proposal submission and **not** through the Vendor portal of BidNet (if allowed), then the following items shall also be included:
 - 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 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 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 Personnel and Subconsultants Listing, which is in Exhibit 2, Agreement, showing all personnel and subconsultants 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 Services outlined in this RFP.

5. 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 or subcontractor'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.
 6. A list of what portion of the Services, if any, will be subcontracted.
 7. A list of at least five (5) references for which similar services have been provided. Include current contact names, addresses, and telephone numbers.
 8. An executed Exhibit 3, Reference Authorization and Release Form.
 9. A letter of reference from the proposing firm's primary bank or financial institution which indicates the bank's opinion on the proposing firm's financial capacity to perform their obligations under the Agreement. The letter shall be placed in a separate sealed envelope labeled with the firm name and the notation "CONFIDENTIAL FINANCIAL REFERENCE". The sealed confidential envelope shall be placed inside the envelope or box containing the firm's proposal.
 10. Litigation and claims history in Colorado over the past five (5) years in which the proposing firm or any of its principals were named in a claim or lawsuit related to the proposing firm's provision of goods or services. Include a list of any ongoing or settled claims, mediations, arbitrations, lawsuits, and judgments during the time period. List must contain a description of the type of claim or suit, the general nature of the dispute, whether it is ongoing or settled, and the general outcome if settled, but need not reveal the other parties' names if it is not in the public record. The history shall be placed in a separate sealed envelope labeled with the firm name and the notation "CONFIDENTIAL LITIGATION AND CLAIM HISTORY". The sealed confidential envelope shall be placed inside the envelope or box containing the proposing firm's proposal.
 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.
- 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 Services are 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): _____

THIS PAGE INTENTIONALLY LEFT BLANK

VII. EXHIBIT 2

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES ON-CALL RESERVOIR ENGINEERING SERVICES

This Professional Consulting Services Agreement for **Reservoir Engineering Services** ("Agreement") is made and entered into on this ___ day of _____, 20___, ("Effective Date"), between the **City of Thornton**, a Colorado home rule municipality, in the state of Colorado, ("Thornton"), and _____ located at _____ ("Consultant"). Hereafter, Thornton and Consultant collectively may be referred to as the "Parties" or individually as the "Party."

I. RECITALS

- A. Thornton sought out Professional Consulting Services for Professional Engineering Services for an on-call, as-needed basis in connection with Project No. 333-21 (the "Project");
- B. Consultant submitted an offer and Thornton selected Consultant to work on this Project after Thornton determined Consultant has the requisite expertise and professional experience to perform the Services this Project requires;
- C. Consultant further represents it has the requisite skills, knowledge, expertise and experience to perform the Services Thornton needs and requires during the term of this Agreement;
- D. Consultant agrees to 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.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS & CONDITIONS

- A. **Project Description.** Consultant to provide Professional Engineering Services for Thornton's reservoir water resources.
- B. **Consultant's Scope of Services, Commencement.** Upon receipt of a written Notice to Proceed from Thornton, Consultant agrees that it will furnish 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**, ("Consultant's General Scope of Services" or "Services").

C. **Term; Commencement and Termination Date.**

1. This Agreement shall commence on the Effective Date above and shall terminate on December 31, 2031, unless terminated earlier by Thornton pursuant to the terms of this Agreement.
2. If a Purchase Order for the Services\Work has been issued by Thornton to Consultant, and the Services\Work will not be completed before the Agreement's termination date, Thornton, at its reasonable discretion, may direct Consultant to complete the Work, and the terms and conditions of this Agreement shall survive until the Work is complete to Thornton's satisfaction.
3. Notwithstanding the termination date of this Agreement as described above in Sec. C.1, Thornton in its sole discretion, may extend this Agreement by a written Amendment executed by Thornton's City Manager ("Manager") or Manager's designee(s) for an additional six (6) months to ensure the continuation of all Services\Work while Thornton seeks to solicit other vendor(s) for the same or similar Services\Work. Any such Amendment shall be subject and subordinate to the terms of this Agreement, except as otherwise agreed to in writing and signed by the Parties.

D. **Task Assignment.**

1. This Agreement provides the master terms that apply to all Services for which Thornton engages Consultant to perform on or after the date of this Agreement.
2. Thornton shall give a written assignment to the Consultant to perform the specified Scope of Services (SOS) as authorized by each Task Assignment issued in accordance with this Agreement. Task Assignments shall be established through a Purchase Order or written Amendment.
3. Except for the limitations set forth in this Agreement, Consultant understands there is no limit on the number of Task Assignments that may be issued by Thornton.
4. Any Task Assignment issued during the term of this Agreement and not completed before the term expires or terminates, shall be completed within the time specified in the Task Assignment.
5. The total compensation for any Task Assignment may be subject to a Not-to Exceed (NTE) amount as provided for in **Exhibit C**.
6. This Agreement does not guarantee any work to the Consultant and Thornton has no obligation to issue a Task Assignment to Consultant for any Services nor does this Agreement create any exclusive right to perform any Service and Thornton may hire others to perform the kinds of Services that Consultant performs.

E. **Contract Documents.**

1. The following documents, including all exhibits and attachments listed, contained or referenced herein, by this reference are incorporated, *verbatim*, and will hereafter be the Agreement:
 - a. Purchase Orders (includes Task Assignment SOS);
 - b. Approved Amendments to this Agreement;
 - c. This Agreement for Professional Consulting Services (together with Exhibits); and
 - d. The Request for Proposals, including all Addenda, if any.
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 E.1 above after the first listed document.

F. **Compensation.**

1. **Remuneration.** In consideration for the completion of the Services by Consultant, Thornton will pay Consultant the billable hourly rates, and approved reimbursable expenses, in accordance with the attached **Exhibit C, Schedule of Charges**. The total compensation for a given Task Assignment may be subject to a NTE amount as provided for in **Exhibit C**. Upon mutual agreement, a NTE amount may be converted to a lump sum fee.
2. **Invoicing.**
 - a. Consultant shall prepare and send by electronic format a detailed monthly invoice to ap.invoices@ThorntonCo.gov.
 - b. Invoices become due and payable thirty (30) Calendar 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 Services. 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 Consultant 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.
3. **Billable Rates.** The billable rates in **Exhibit C** shall remain fixed for the initial twelve (12) month period after the Effective Date. However, Consultant may request an increase to the Billable Rates every twelve (12) month period thereafter, provided Consultant's request is in writing and given to Thornton a minimum of sixty (60) Calendar Days before the next twelve (12) month period begins. Under no circumstances will any Billable Rate increase exceed the inflation rate as defined by the current Denver Boulder Greeley CPI and published by the Bureau of Labor Statistics or as agreed to in writing by Thornton. Any adjustment to Billable Rates shall be effective after the written Amendment has been executed by Thornton and Consultant.

G. Changes to Consultant's Scope of Work, Terms or Conditions.

- a. A change in Consultant's Scope of Services is any change or amendment of Services that is different from, or in addition to either Consultant's General Scope of Services as defined in **Exhibit A** of this Agreement or the specific Task Assignment.
- b. No change to the Professional Scope of Services, including any requested additional compensation, shall be effective or paid unless authorized by a written amendment executed by Thornton's City Manager (Manager) or Manager's designee(s).
- c. All changes made to any Task Assignment shall be done by an authorized Purchase Order or a written amendment. If Consultant proceeds without written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on a theory of promissory estoppel, unjust enrichment, quantum meruit, or implied contract.
- d. 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 Professional Scope of Services or the terms of this Agreement.

H. Personnel Assignments, Subcontracting.

1. Consultant shall perform the Services with the personnel identified in the attached **Exhibit B**, unless otherwise authorized in writing by Thornton. All of Consultant's key professional personnel identified in **Exhibit B** will be assigned by Consultant or subconsultant (includes any subcontractors) to perform Services under this Agreement. Consultant shall submit to Thornton a list of any additional key professional personnel who will perform Services under this Agreement within thirty (30) Calendar Days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks assigned. Thornton may, in its reasonable discretion, approve or reject any person or persons at any time working for Consultant. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such Services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the term of this Agreement to the extent practicable and to the extent that such Services maximize the quality of Services performed hereunder.
2. If Consultant decides to replace any of its key professional personnel, it shall notify Thornton in writing of the changes it desires to make. No such replacement shall be made until the replacement is approved in writing by Thornton, which approval will not be unreasonably withheld. Thornton will respond to Consultant's written notice regarding replacement of key professional personnel within fifteen (15) Calendar Days after Thornton receives the list of key professional personnel, which Consultant desires to replace. If Thornton does not respond within that time, the listed personnel will be deemed to be approved by Thornton.
3. If, during the term of this Agreement, the Manager or Manager's designee(s) determines that the performance of approved key professional personnel is not acceptable, they will notify Consultant and give Consultant the time that the Manager or Manager's designee considers reasonable to correct such performance. Thereafter, the Manager or Manager's designee may require Consultant to reassign such key professional personnel. If the Manager or Manager's designee notifies Consultant that certain key professional personnel must be reassigned, Consultant shall use its best efforts to obtain adequate substitute personnel within ten (10) Calendar Days from the date of the notice.
4. While Consultant may retain and subcontract with subconsultants, no final agreement with any such subconsultants shall be entered into without the prior written consent of the Manager or Manager's designee. Requests for such approval must be made in writing and include a description of the nature and extent of the Services to be provided by the subconsultant, the name, address, the professional experience and qualifications of the subconsultant and any other information. Approval of the subconsultant shall not relieve

Consultant of any obligations under this Agreement. Any final agreement with the approved subconsultant must contain a valid and binding provision whereby the subconsultant waives any and all rights to make a claim of payment against Thornton arising out of the performance of the Services under this Agreement. Subconsultants listed in Consultant's Proposal will be deemed acceptable unless Thornton notifies otherwise.

5. Since Consultant's represented professional qualifications are a consideration to Thornton in entering into this Agreement, the Manager or Manager's designee will have the right to reject any proposed subconsultant deemed unqualified or unsuitable for any reason to perform the proposed Services, and the Manager or Manager's designee(s) will have the right to limit the number of subconsultants.
6. Consultant shall not retain any subconsultant to perform Services under this Agreement if Consultant is aware, after a reasonable inquiry has been made, that it is connected with the sale or promotion of equipment or material which is or may be used on the Services, or any other conflict of interest exists; but in unusual circumstances, Thornton may permit a waiver in writing provided that Consultant has fully disclosed any conflict of interest of its subconsultant.

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.

Consultant's attention is directed to the fact that 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 they will be deemed to be included in this Agreement the same as though written out in full.

2. Worker Status. Pursuant to Colorado law, a Consultant whose performance of Services involves provision of a service and not provision of a specific end product shall by 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 a worker without authorization, 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 a worker without authorization, 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 a worker without authorization, Consultant shall:
 - i. Notify the subconsultant and Thornton within three (3) Calendar Days that Consultant has actual knowledge that the subconsultant is employing or contracting with a worker without authorization; and
 - ii. Terminate the subcontract with the subconsultant if within three (3) Calendar Days of receiving the notice required pursuant to this subparagraph, the subconsultant does not stop employing or contracting with the worker without authorization; except that Consultant shall not terminate the subcontract with the subconsultant if during such three (3) Calendar Days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with a workers without authorization.
- 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. Pursuant to Colorado law, a Consultant whose form of business is a sole proprietor or individual by signature and attestation below hereby agree, upon Notice of Award, to complete and file with Thornton the attached **Exhibit D, Affidavit** in and to 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 a ten (10) Calendar Day 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 any material, equipment, process, or procedure, which 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. MISCELLANEOUS TERMS

- 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.
- 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 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. Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Thornton and Consultant against other insurable hazards relating to the Services.
6. 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.
7. 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**. 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
Patrick Hinterberger, Sr. Contract Administrator
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 no later than thirty (30) Calendar Days prior to the expiration date and shall indicate "Renewal COI" and the Project Number in the e-mail subject line.

8. 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.

9. Thornton 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.
10. 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.
11. 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.
12. 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) Calendar 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. In the event the Agreement is terminated for convenience, 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 may seek to exercise any and all available legal and equitable remedies.
- b. In the event this Agreement is terminated by Thornton for convenience, Thornton shall issue a written Notice of Termination and Thornton shall pay Consultant for all Services previously authorized and properly completed prior to the date of the Notice of Termination.
- c. Notwithstanding the foregoing, if a Notice to Proceed for a specific Task Assignment's Scope of Services has been issued by Thornton to Consultant and the Services will not be completed by the Agreement's termination date, and if Thornton desires Consultant to complete the Services, the terms and conditions of this Agreement shall survive the termination date of the Agreement and continue until the Services for that Task Assignment are complete to Thornton's satisfaction.

2. **Termination for Non-Appropriations.** 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 year, Thornton may terminate this Agreement without penalty and 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:

Attention: _____

- 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.** Consultant agrees not to assign, pledge, or transfer its duties and rights in this Agreement, in whole or in part, without first obtaining the written consent of the Manager or Manager’s designee(s)
- J. **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.
- K. **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.
- L. **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) Calendar Days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to Thornton.
- M. **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.

- N. **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.
- O. **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 of the Manager or Manager's designee(s). 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.
- P. **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.
- Q. **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.
- R. **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.
- S. **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.
- T. **Joint Venture.** If 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.
- U. **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.

- V. **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.

- W. **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.

- X. **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.

- Y. **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 to the Manager or Manager's designee(s), shall be valid unless they are contained in an instrument, which is executed by the Parties with the same formality as this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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:
Tami Yellico, City Attorney

CITY OF THORNTON, COLORADO:

By: _____
Michael J Hickman, Assistant City Attorney II

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 |

THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT A

CONSULTANT'S PROFESSIONAL SCOPE OF SERVICES

General Project Description: Consultant to provide Professional Engineering Services for Thornton's reservoir water resources.

Thornton requires Consultant to provide Professional Engineering Services on an on-call, as-needed basis. These Services may be required for routine scheduled projects or on an expedited basis.

Consultant shall perform the Services in accordance with the specific Task Assignment Scope of Services (SOS) issued by Thornton.

For scheduled, non-expedited Services, Consultant shall prepare a Not-to-Exceed (NTE) fee proposal based on the personnel billable rates, estimated reimbursable expenses, and the requirements listed in Exhibit C Schedule of Charges for each SOS provided by Thornton. The schedule for performance of non-expedited Services for a given Task Assignment shall be as mutually agreed by the Parties and as stated in the written Task Assignment SOS.

Services may be needed on an expedited basis due to a condition that poses a threat to public health or welfare or to mitigate a negative impact to Thornton, such as minimizing the cost of ongoing damage. For expedited Services, Thornton may issue a Purchase Order to Consultant based on a verbal SOS and/or a verbal fee estimate, provided these verbal understandings are followed up as soon as possible with written documentation, which shall be incorporated into the Agreement documents by reference. Consultant will be compensated based on actual labor hours incurred multiplied by the personnel billable rates in Exhibit C, plus approved reimbursable expenses. If Thornton and Consultant later mutually agree upon a NTE fee, the NTE fee will be incorporated into the SOS, in which case the compensation will be subject to limitation by the NTE fee. The schedule for delivery of the expedited Services to Thornton shall be as mutually agreed to by the Parties.

Civil and Miscellaneous Engineering Services

Consultant shall be capable of providing some or all of the services listed below for engineering and planning of Projects during the Contract period as may be requested by Thornton. Generally, these Projects will be related to the construction of gravel pit reservoirs and their distribution networks. All Services, where required, shall be stamped by a professional engineer registered in the State of Colorado.

Specifically, the Consultant may be asked to perform the following services or may be asked to review and comment on the following services, which have been performed by others:

- A. Hydraulics - The Consultant shall provide planning, analysis, permitting, and design services for construction of gravel pit reservoir facilities, which may include, but are not limited to; interconnects, conduits, diversion structures, well fields, infiltration galleries, pump stations, dams, flow measuring devices, feeder ditches, and enlargement of irrigation ditches.
- B. Hydrology - The Consultant shall provide all analysis and study of surface and ground water, hydrology associated with gathering and analyzing data for slope stability analysis, surface water availability, diversion capacity, and ground water data related to lined water facilities and wells.
- C. Geotechnical - The Consultant shall provide analysis, design, permitting, and review services for the construction of gravel pit reservoirs, which may include, but are not limited to; slurry walls, soil borings, monitoring wells, slope analysis, dams, levees, roads, pump stations, and interconnects.
- D. Masterplanning – The Consultant shall provide planning and computer modeling services for the optimization of gravel pit storage reservoirs and associated facilities as well as Flood Hazard and Flood Plain Management.
- E. Survey - The Consultant shall provide surveying services, which include, but are not limited to; boundary surveys, construction staking, ALTA Survey, design surveys, and as-built surveys.
- F. Inspection - The Consultant shall provide construction inspection and or quality control and assurance services for Capital Improvement Projects and due diligence for Purchase Contracts. This Work shall include, but not be limited to; engineering oversight of gravel mining permits and Amendments, the construction of slurry walls, gravel pit side slopes, pump stations, pipelines, ditches, interconnects, dams and other necessary facilities.
- G. Environmental Coordination and Permitting – The Consultant shall provide permitting services, which may include:
 - 1. Provide analysis and permitting assistance for the construction of Projects under the jurisdiction of Adams County, Division of Minerals and Geology, State Engineers Office, Urban Drainage and Flood Control District, Army Corps of Engineers, US Fish and Wildlife Service, Environmental Protection Agency, and other agencies as needed.
 - 2. Coordinate with Thornton’s Environmental Consultants.
 - 3. Prepare documents, maps, and exhibits as required by Thornton.
- H. Computer Aided Design and Drafting (CADD) and Geographic Information System (GIS) - Services for CADD drafting of Civil Design Projects and GIS mapping for planning Projects. CADD Work shall be performed on AutoCadd. All GIS data shall be provided in Arc View.

- I. Expert Witness Testimony – The Consultant shall have experience providing expert witness testimony and shall provide testimony as needed.
- J. Public Involvement - Any Project handled by the Consultant may require both public contact and public meetings. The Consultant shall provide all exhibits and aids necessary to conduct such meetings and presentations. The Consultant shall attend public meetings, as needed. The Consultant may be required to lead public involvement efforts, including public hearings and neighborhood meetings.
- K. Scheduling - The Consultant will provide Critical-Path-Method (CPM) scheduling on Thornton Projects using Microsoft Project (unless approved otherwise) to identify conflicts between interrelating Project activities.
- L. Utilities Design - The Consultant will provide utility relocation design for waterlines, sanitary sewers, and storm sewers, including coordination with the utility companies on behalf of Thornton.
- M. Emergency Phone Numbers - The Consultant shall provide phone numbers of key personnel that can be reached in emergency situations, outside of regular working hours.
- N. Other - The Consultant shall provide other services as agreed to in writing by Thornton and the Consultant.
- O. All Services shall be performed in conformance with applicable federal, state, and local law, rules and regulations.

THIS PAGE INTENTIONALLY LEFT BLANK

THIS PAGE INTENTIONALLY LEFT BLANK

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:

| In-house Expense Category | UOM | Rate | Outside Expense Category | UOM | Rate |
|-----------------------------------|-------------|-------------|---------------------------------|------------|-------------|
| 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 this sworn statement is required by law because I will be performing Services under a public contract, which is a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this 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

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 the Reservoir Engineering Services, Project No. 333-21 (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