SAMPLE GENERAL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the City of Thornton, located at 9500 Civic Center Drive, Thornton, CO 80229, a Colorado home rule municipality, in the State of Colorado (hereinafter, “Thornton”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Service Provider” or “Vendor”) a \_\_\_\_\_\_\_\_company, located at <insert Vendor’s address>, in the State of <insert Vendor’s state>. Thornton and Service Provider hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

1. **RECITALS**
2. Thornton has determined that over the term of this Agreement, from time to time, the need will exist for the provisioning of certain services in connection with **Fleet Maintenance Services, 128-22** (the “Project”); and
3. Service Provider has held itself out to Thornton as having the requisite expertise and experience to perform the required Services for the Project.
4. In consideration of the covenants and promises contained in this Agreement and Recitals incorporated herein, which their sufficiency is acknowledged by Service Provider and Thornton, the Parties agree as follows:
5. **TERMS AND CONDITIONS**

1. **Description of Services, Work.** Provision of fleet maintenance services, including repair and maintenance of all Thornton owned units, along with all required administrative office work.
2. **Service Provider** **Responsibilities, Scope of Services/Work.** Service Provider will furnish all of the labor, supplies and materials, equipment, printing, and any other facilities or resources required to perform and complete the Services described in the attached **Exhibit A**, hereafter called, “Service Provider’s Scope of Services,” the “Services” or the “Work.
3. **Commencement Date, Initial and Renewal Terms**.

1. This Agreement shall commence on January 1, 2024 (“Commencement Date”), and terminate on December 31, 2033.
2. This Agreement is effective on the Commencement Date, unless it is terminated sooner in accordance with this Agreement’s Part III. Section EGrounds for Termination, and it shall be for one (1) year, which shall be the “Initial Term”. Thereafter, Thornton and Vendor may renew this Agreement for successive one (1) year periods ( “Renewal Term”). Each Renewal Term shall be approved by a written and signed amendment to this Agreement or signed Purchase Order. Notwithstanding the foregoing, Any Renewal Term is subject to annual appropriations approval by Thornton’s City Council.
3. After the Initial Term and Renewal Terms conclude, Thornton and the Vendor may mutually agree to extend the Agreement every year thereafter for up to five (5) years (“Extended Term”). Each year within the Extension Term shall be governed and control by terms and conditions of this Agreement, now and as amended.
4. Except as stated in this section, the Agreement shall not be renewed after December 31, 2038 (“Final Expiration Date”); provided, however, when this Agreement terminates on the Final Expiration Date, if Thornton has not awarded and entered into Agreement with a new, or its current Vendor to perform the services as set forth in Exhibit A, Thornton reserves the right to continue the Services with Service Provider. The Services shall be performed on a month-to-month basis only (“Transition Services”), until Thornton provides written notice that Service Provider’s Services have been terminated.
5. Notwithstanding the foregoing, if Thornton and Service Provider continue with Transition Services, the terms and conditions of this Agreement shall continue until Thornton terminates Service Provider’s Transition Services.
6. **Contract Documents.**

1. The following documents, which includes any exhibit and attachment listed, contained or referenced in the contract documents, by this reference, are incorporated, verbatim, and will hereafter be, the Agreement:
	1. Approved Amendments to this Agreement;
	2. Approved Change Orders to this Agreement; and
	3. This General Service Agreement (together with Exhibits).
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 D.1 above after the first listed document.
3. Service Provider 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 D.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:
	1. The Request for Proposals (including Addenda);
	2. The Service Provider’s response to the Request for Proposals;
	3. Other Thornton policies and procedures as applicable.
4. **Personnel**

1. Service Provider shall perform the Services with the employees, subcontractors, agents and all other persons (“Personnel”) meeting the qualifications specified in the attached **Exhibit A**, unless otherwise authorized in writing by Thornton.
2. Service Provider shall employ competent Personnel at all times during the performance of the Work. Service Provider shall be responsible for acts and omissions of its Personnel working for Service Provider. Service Provider shall enforce strict discipline and good order among its Personnel performing the Work.
3. The person in charge shall represent Service Provider and communications given to the person in charge shall be as binding as if given to Service Provider. Important communications will be confirmed in writing. Other communications shall be similarly confirmed on written request.
4. Thornton, at any time, may revoke its approval of any person who is not performing in a manner satisfactory to Thornton, and Service Provider shall remove the objectionable person from the Work and replace them with someone acceptable to Thornton.
5. **Compensation.**
6. Remuneration. Thornton agrees to pay Service Provider for the satisfactory progression and completion of the Services based on some combination of the following methods:
	1. A sum that is not to exceed (“NTE”) an amount of ($ ) spell amount Dollars (a “Fixed Fee”); or

* 1. The agreed upon unit prices as set forth in Service Provider’s proposal (“Unit Pricing”); or
	2. The billable hourly rates set forth in the attached **Exhibit B**, Schedule of Charges(“Hourly Rates”).

Notwithstanding which prescribed payment method is used, Thornton, in its reasonable discretion, may select one (1) or a combination of the aforementioned payment methods to compensate Service Provider. Likewise, the Parties by written amendment may convert from one (1) approved payment method to another under this Agreement. Service Provider further understands any compensation received from Thornton is subject to a NTE amount as provided for in **Exhibit B.**

1. Purchase Order Required. No work shall be performed without Thornton issuing a Purchase Order to Service Provider.
2. Invoicing.
3. Unless directed otherwise by Thornton’s representative, Service Provider shall submit and send a detailed invoice in .pdf format to ap.invoices@ThorntonCo.gov.
4. Due Date. Compensation shall be due and payable thirty (30) Calendar Days after date of receipt by Thornton of a complete and correct invoice.
5. Hourly Rate. Payments to Service Provider based on billable hourly rate and eligible reimbursable expenses shall include hourly breakdowns for all personnel and shall show an itemization of other charges.

1. Required Invoice Information. Each invoice shall reference your assigned Purchase Order Number. Invoices shall also include a summary of the initial Agreement amount, amendments, total Agreement amount, and current billing and payment summaries.
2. Billable Rate Changes.
3. All billable rates shall remain fixed for, at a minimum, the initial twelve (12) month term, or the first anniversary of the Agreement, whichever one applies (“Initial Year”).
4. Upon conclusion of the Initial Year, the Service Provider may request an increase for the following Renewal Year. It is the obligation of the Service Provider to provide a written request of an increase for the following Renewal Year to Thornton, with a written notice of a minimum of ninety (90) Calendar Days prior to the upcoming term. Should the Service Provider fail to provide a written request in time, Thornton may elect to continue forward for the upcoming Renewal Year at the same pricing.
5. All revised billable rates shall only be effective by a written Amendment of this Agreement executed by Thornton. Under no circumstances shall any revised billable rate increase exceed the inflation rate based upon the following Consumer Price Indices published by the Bureau of Labor Statistics and the St. Louis Federal Reserve Economic Data (the “FRED”):
	* 1. For Technicians: The Consumer Price Index for All Urban Customers, Motor Vehicle Maintenance and Repair in U.S. City Average, series ID CUSR0000SETD
		2. For Office and Supervisory Staff: The Consumer Price Index for All Urban Wage Earners and Clerical Workers in U.S. City Average, series ID CWUR0000SA0
		3. For Parts and Materials Components: The Consumer Price Index for All Urban Consumers Motor Vehicle Parts and Equipment in U.S. City Average, series ID CUUR0000SETC
6. Performance Standards, Metrics, and Penalties.
7. Upon execution of this Agreement, Thornton may elect to enforce performance standards based upon mutually agreed to performance metrics that are based upon acceptable availability percentages, as stated within **Exhibit B**.
8. Should these performance standards and percentages not be met in a given month by the Service Provider, Thornton shall impose the agreed upon penalty percentage to the fees stated in this Agreement. All penalty fees imposed by Thornton in each month, shall result in a reduced invoiced amount in the following month’s invoice by the Service Provider. This penalty fee(s) shall be a separate line item on the Service Provider’s invoice to Thornton.
9. **Changes to Service Provider’s Scope of Services.**
10. A change in the Service Provider’s Scope of Services shall constitute any change or amendment of Services, which is different from or additional to Service Provider’s Scope of Services as defined in **Exhibit A** of this Agreement.

1. No change to this Agreement’s terms and conditions, and General Scope of Services, including any requested changes to contractually established billable/unit rates, shall be effective or paid unless authorized by a written Amendment executed by Thornton’s City Manager (“Manager”) or Manager’s designee(s) with the same formality as this agreement.
2. 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 Scope of Services or the terms of this Agreement.
3. If Service Provider proceeds without such written authorization, then Service Provider 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 Agreement.
4. **Compliance with All Laws and Regulations.**
5. All of the Services performed under this Agreement by Service Provider 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.
6. The Service Provider’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 herein written out in full.
7. Worker Status. Pursuant to Colorado law, a Service Provider whose performance of Services involves provision of a service and not provision of a specific end product shall by signature and attestation below certify to the following:
8. Service Provider, as of the date of this Agreement or order, does not and shall not knowingly employ or contract with a worker without authorization, who will perform Services under this Agreement.
9. Service Provider 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.
10. Service Provider 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.
11. Service Provider shall not enter into a contract with a subcontractor that fails to certify to Service Provider that the subcontractor shall not knowingly employ or contract with a worker without authorization, to perform Services under this Agreement.
12. Service Provider 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.
13. Service Provider obtains actual knowledge that a subcontractor performing Services under this Agreement employs or contracts with a worker without authorization, Service Provider shall:
	1. Notify the subcontractor and Thornton within three (3) Calendar Days that Service Provider has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and
	2. Terminate the subcontract with the subcontractor if within three (3) Calendar Days of receiving the notice required pursuant to this subparagraph, the subcontractor does not stop employing or contracting with the worker without authorization; except that Service Provider shall not terminate the subcontract with the subcontractor if during such three (3) Calendar Days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.
14. Service Provider 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).
15. If Service Provider violates any provision of this certification, Thornton may terminate this Agreement for breach of Agreement. If this Agreement is so terminated, Service Provider shall be liable for actual and consequential damages suffered by Thornton.
16. **Confidentiality Obligations.**
17. To the extent Service Provider requires Thornton to provide Service Provider with its reports and other data (“Confidential Information”) as may be available to Thornton and reasonably required for Service Provider to perform the Services, Service Provider will keep Thornton’s Confidential Information secret and will not disclose it to any third party, take or misuse any of the Thornton’s Confidential Information, or any other information Service Provider acquires or has access to because of its provision of Services.
18. At all times this Agreement is in effect, Service Provider will not use or seek to use any of Thornton's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business or in any way adverse to Thornton's interests.
19. Thornton's Confidential Information is Thornton's exclusive property, therefore, on Thornton's request or the termination of this Agreement, Service Provider will promptly return Thornton’s Confidential Information including all documents, disks or other computer media or other materials in the Service Provider’s possession or control containing any of Thornton’s Confidential Information.
20. After this Agreement terminates, the Service Provider will preserve and not disclose directly or indirectly to any third party Thornton's Confidential Information and will promptly advise Thornton of any unauthorized disclosure or use of its Confidential Information by any person or entity.
21. Service Provider is authorized by Thornton to retain copies of its documents at Service Provider expense.
22. In regards to any electronic devices with data storage capability, including but not limited to, computers and copiers used by the Service Provider in connection with the performance of Services pursuant to this Agreement, Service Provider represents the following:
23. All devices, such as copiers or fax machines that are not intended to be a data storage devise for purposes of performing the Services shall be routinely scrubbed, either manually or automatically, to delete any Confidential Information related to the Services.

1. When any electronic device with data storage capacity is taken out of service, all such devises will be securely scrubbed of all data related to Thornton’s Project and all data storage drives will be physically destroyed before disposing of the device to insure no Confidential Information belonging to Thornton could ever be retrieved from such device.
2. **Ownership of Work Product.**
3. All Services, data, drawings, designs, plans, reports, studies, computer programs (nonproprietary), computer input and output, analyses, tests, maps, surveys, or any other materials (“Work Product”) developed by Service Provider shall be the sole and exclusive property of Thornton. Service Provider agrees to transfer the Work Product’s copyright, trademark, or other intellectual property rights for no additional cost to Thornton. However, any reuse of Work Product other than for the specific intended purpose of this Agreement by Thornton without written authorization by Service Provider will be at Thornton’s risk.
4. Before disposing of any Work Product materials Service Provider shall provide Thornton with a ten (10) Calendar Day written notice indicating it has Work Product materials, to give Thornton a reasonable opportunity to take physical possession of Work Product materials.
5. Aerial photography supplied by Thornton to Service Provider shall not be utilized for any purpose other than to perform the Services on behalf of Thornton.
6. **MISCELLANEOUS TERMS**
7. **Indemnification.** To the fullest extent permitted by law, Service Provider 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 Service Provider, any subcontractor of Service Provider, or any officer, employee or agent of Service Provider, 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.
8. **Insurance.** The Service Provider agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:
9. Worker’s 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.
10. Commercial General Liability Insurance **(MINIMUM LIMITS)**
11. Each Occurrence $2,000,000
12. Products/Completed Operations Aggregate $2,000,000
13. Personal and Advertising Injury $2,000,000
14. General Aggregate $2,000,000

The 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 Service Provider; (iii) independent subcontractors; (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. The coverage shall not exclude faulty workmanship as a covered occurrence.

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.

1. Garage Keepers’ Legal Liability **(MINIMUM LIMITS)**
2. Each Claim $1,000,000
3. Aggregate $2,000,000

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.

1. 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 the Service Provider’s operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.
2. Additional Insured. The Service Provider shall name Thornton, its officers, agents, and employees as additional insureds with respect to the Commercial General Liability and Auto Liability coverages required herein.
3. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded, along with the Additional Insured Endorsement, to Thornton by the Service Provider’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 Certificate of Insurance and Additional Insured Endorsement shall include the Service Provider’s e-mail address for future inquires and updates, and shall be sent to:

 City of Thornton

 Attention: Andrew Miskell, CPPB

 Senior Purchasing Analyst

 9500 Civic Center Drive

 Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton’s Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date along with the renewal Additional Insured Endorsement, and shall indicate “Renewal COI” and the Project Number in the e-mail subject line. Thornton reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Service Provider agrees to execute any and all documents necessary to allow Thornton access to any and all required insurance policies and endorsements pertaining to this particular Project.

1. Failure to Insure. Failure on the part of the Service Provider or subcontractor 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 thereto, and may pay any and all premiums in connection therewith, and all monies so paid by Thornton shall be repaid by Service Provider to Thornton upon demand, or Thornton may offset the cost of the premiums against any monies due to Service Provider from Thornton.
2. Other Insurance Requirements.
3. Service Provider shall procure and maintain and shall cause any subcontractor of the Service Provider 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 the Service Provider pursuant to this section. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
4. 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 the Service Provider. The Service Provider shall be solely responsible for any deductible losses under the policies required above.
5. Service Provider 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.
6. 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 or 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.
7. **Independent Contractor.**
8. It is understood and agreed by and between the Parties that the status of the Service Provider 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 the Service Provider 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.
9. Without limiting the foregoing, the Parties hereby specifically acknowledge that **the Service Provider is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Service Provider or some other entity besides Thornton, that the Service Provider is not entitled to Workers’ Compensation benefits from Thornton and that the Service Provider 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 the Service Provider’s insurance obligations that are set forth in this Agreement.
10. **Governmental Immunity**. The Parties hereto 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 amended, or otherwise available to Thornton, its agents, officers, or employees.
11. **Grounds for Termination.**
12. Termination for Convenience by Thornton. In the event this Agreement is terminated for convenience, Thornton shall issue a written Notice to Terminate and Service Provider will be paid for all Services previously authorized and completed up to the date of Termination. Service Provider shall not be entitled to profit or overhead on uncompleted Services.
13. Termination for Cause. If Service Provider substantially or materially breaches the terms of this Agreement, or defaults in fulfilling the applicable terms and conditions of this Agreement shall be cause to terminate this Agreement and Thornton may seek to exercise all available legal and/or equitable remedies.
14. Termination for Non-Appropriations. In the event that Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may, at the beginning of the fiscal year for which the City Council does not appropriate such funds and upon prior written notice as provided for, may terminate this Agreement without penalty and be released of further obligations.

1. **Notice.** Any notice or communication between Service Provider 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: Megan deGrood, CPPB, Purchasing Manager

 9500 Civic Center Drive

 Thornton, CO 80229-4326

 SERVICE PROVIDER: \_\_\_***<Sample Only>***\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_

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

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

1. **Applicable Law, Venue, Statute of Limitations.** This Agreement shall be governed by the laws of the State of Colorado. 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 the Service Provider against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).
2. **Assignment.** Service Provider 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.
3. **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.
4. **Inspection of Records.** In connection with the Services performed hereunder, Thornton and any of its duly authorized representatives shall have access to all of Service Provider’s books, documents, papers, and any other records of Service Provider which relate to the Services. Service Provider 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. Service Provider shall retain these records for three (3) years after termination of this Agreement.
5. **Conflict of Interest.** Service Provider agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, activity, or conduct which would result in a conflict of interest. Service Provider 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 Service Provider by placing Service Provider’s own interests, or the interest of any party with whom Service Provider 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 Service Provider written notice that describes the conflict. Service Provider 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.
6. **Coordination of Services.** Service Provider shall fully coordinate its services with other service providers, contractors, or other entities performing Services on the Project that interfaces with or is affected in any way by Service Provider’s services, and with any interested city or other governmental agencies.
7. **Non-Discrimination.** Service Provider, its agents, employees, and subcontractors 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.
8. **Advertising, Public Disclosure.** Service Provider shall not include any reference to this Agreement or to Services performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager or his designee.
9. **Time is of The Essence.** The Parties agree that in the performance of the terms and requirements of this Agreement by Service Provider that time is of the essence.
10. **Inurement.** The rights and obligations of the Parties set forth herein shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
11. **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.
12. **Joint Venture**. If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Service Provider set forth in this Agreement.
13. **Taxes and Licenses.** Service Provider 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 work. Service Provider shall furnish Thornton, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. Service Provider shall promptly pay, when due, all bills, debts, and obligations it incurs performing the Services and allow no lien, mortgage, judgment, or execution to be filed against land, facilities, or improvements owned by Thornton.
14. **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.
15. **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 Service Provider 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 Service Provider that subcontractors and any other persons other than Thornton or Service Provider receiving any benefits from this Agreement shall be deemed to be incidental, and not intended, beneficiaries only.
16. **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.
17. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained herein constitute this 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 his designee, shall be valid unless they are contained in an instrument that 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: CITY OF THORNTON, COLORADO:

Tami Yellico, City Attorney

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: FIRM:(Separate from Authorized Signature) ***<Sample Only>*** \_\_\_\_\_\_\_\_\_***<Sample Only>***\_\_\_\_\_\_\_\_\_\_ Attester Signature Authorized Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print Name Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title Title   |

**EXHIBIT A**

**SERVICE PROVIDER’S SCOPE OF SERVICES**

*Scope of Services to be inserted and completed by the Buyer of Record after an award has been issued by Thornton for the RFP. This is a placeholder for the sample agreement.*

**EXHIBIT B**

**SCHEDULE OF CHARGES**

*Schedule of Charges to be inserted and completed by the Buyer of Record after an award has been issued by Thornton for the RFP. This is a placeholder for the sample agreement.*