

**CITY OF THORNTON**

**REQUEST FOR PROPOSALS**

**FOR**

**OWNER'S ADVISOR SERVICES**

**PFAS TREATMENT**

**PROJECT NO. 23-127**

**SEPTEMBER 2023**

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### III. NOTICE REQUEST FOR PROPOSALS

The City of Thornton, CO (“Thornton”) respectfully requests separate sealed Proposals for Owner’s Advisor Services for **Owner’s Advisor Services PFAS Treatment, Project No. 23-127** (hereinafter referred to as “Project”). Proposals will be received until 5:00 p.m., local time, October 11, 2023, in the Contract Administration Office, 9500 Civic Center Drive, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326.

Approved Methods for Submission of Proposals:

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, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326.

Late Proposals will not be accepted under any circumstances.

#### Project Description:

Provide Owner’s Advisor (OA) services to perform overall Project management, preparation of a treatment technology study, develop conceptual documents, advise on Colorado Department of Health and Environment (CDPHE) permitting requirements and variances, assist Thornton with completing the Purpose and Need Assessment (PNA) for submittal to CDPHE and Denver Water State Revolving Fund (DWSRF), strategize sequencing of Best Available Techniques (BAT) for both water treatment plants to meet compliance deadlines, assist in DWSRF and other grant submittals and documentation, advise on project delivery method for the Design Engineer/Contractor team (Design-Build [DB] or Construction Manager at Risk [CMAR]), develop the Request For Qualifications (RFQ)/Request For Proposal (RFP) and ensure the contract is properly solicited and awarded through a competitive RFQ/RFP process, provide oversight, review and management of the contract design deliverables, as well as provide operation recommendations.

The Owner’s Advisor’s services will be utilized to assist Thornton in achieving the successful outcome of the Project, from Project conception through Final Design of the Project. Thornton anticipates the need for OA services for two to three years. Additional tasks may be added as the Project evolves, which may include Construction Management services.

#### Project Background:

The Project is in response to the Environmental Protection Agency (EPA) Regulation of Per- and Polyfluorinated Substances (PFAS) through the Safe Drinking Water Act (SDWA) that began in 2009 and the most recent announcement on March 14, 2023, of the proposed National Primary Drinking Water Regulation (NPDWR) for six (6) PFAS compounds. As a result of the anticipated NPDWR, a preliminary Thornton PFAS Study was performed by Carollo Engineers; the Final Report, July 2023, is found in **ATTACHMENT A**. The purpose of this Project is to identify PFAS treatment needs for both water treatment plants, and to help the city strategize a

plan to meet current and future regulations and treatment goals while optimizing available resources.

The fifty (50) million gallons per day (MGD) Wes Brown Water Treatment Plant (WBWTP) is one of two (2) water treatment plants currently operated by Thornton and uses Powder Activated Carbon (PAC) for taste and odor removal in the raw water pipeline ahead of solids contact clarifiers followed by submerged ultra-filtration membranes. The WBWTP treats raw water sources coming from the South Platte River, adjacent alluvial wells, and the Lower Clear Creek. Thornton's other water treatment plant, the 20 MGD Thornton Water Treatment Plant (TWTP), uses conventional flocculation and sedimentation followed by an Advanced Oxidation Process (AOP) utilizing hydrogen peroxide and ozone followed by biologically active filters (BAF) with granular activated carbon (GAC) media. TWTP treats source waters from Upper Clear Creek via Standley Lake and the South Platte River.

Currently, the WBWTP is meeting the current proposed maximum contaminant (MCL) of four (4) parts per trillion (ppt) for each Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) by using PAC. The TWTP does not use PAC and is currently not meeting the current proposed MCL when treating South Platte River water. PAC system improvements and source water blending may prove beneficial at the WBWTP. The OA shall advise Thornton on what treatment technologies are recommended to meet the proposed MCL of four (4) ppt in the short term while the regulations are being finalized. Continued use of PAC at WBWTP should be considered. Anticipating the goal of non-detect PFOA and PFOS, the Project will include a treatment technology study addressing both short and long term PFAS treatment goals at both treatment plants.

Currently, a Treatment Capacity Study is in progress to determine where additional treatment of fifteen (15) MGD of future flow (buildout year 2065) will occur. For purposes of this RFP, it is assumed that the future capacity of each treatment plant is fifty-five (55) MGD and thirty (30) MGD at WBWTP and TWTP, respectively. The Study will be complete in Q3 2023. The future capacity of each treatment plant should be considered for the Project.

The goal is to have the Project operable in 2026 at WBWTP and TWTP per the proposed NPDWR. If this is not practicable, advise Thornton to request a variance. The total Project budget, including Owner's Advisor's services, permitting, design, construction, and commissioning is ninety-two million dollars (\$92,000,000). This dollar amount assumes that GAC will be the selected BAT for both treatment plants in year one. If PAC is recommended for the WBWTP the Project budget will be lower.

#### Eligibility:

To be eligible, proposing firms must have been engaged as an owner's advisor and as a design-build team-member on one (1) or more water treatment projects with individual project values of at least thirty million dollars (\$30,000,000) within the past eight (8) years. In addition, firms must have recent, significant experience with water treatment projects of similar scope and complexity and have extensive experience and expertise in permitting and processes for this type of project. Also, firms may not be engaged in work for other clients that pose or create a conflict of interest in representation of other clients' water supply planning objectives, as solely determined by Thornton.

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

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

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

An optional Pre-Proposal Conference to discuss the Project(s) will be held at **11:00 a.m., September 19, 2023**, in Conference Room 201, at the Wes Brown Water Treatment Plant (WBWTP) at the aforementioned address 3651 East 86<sup>th</sup> Avenue, Thornton, CO 80229. 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, “Proposal Enclosed, Owner’s Advisor Services PFAS Treatment, Project No. 23-127”**. 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, Owner’s Advisor Services PFAS Treatment, Project No. 23-127”**.

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 Dennis Laurita, Contract Administrator, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax 303-538-7556, or e-mail – [dennis.laurita@ThorntonCo.gov](mailto:dennis.laurita@ThorntonCo.gov), 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays.

Date First Published: September 6, 2023

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

BY:

\_\_\_\_\_  
Dennis Laurita  
Contracts Supervisor



## IV. PROPOSAL INSTRUCTIONS AND INFORMATION

Thornton is soliciting written Proposals from qualified firms for Owner's Advisor Services for **Owner's Advisor Services PFAS Treatment, Project No. 23-127**. 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: Dennis Laurita, Contracts Supervisor  
9500 Civic Center Drive  
Thornton, CO 80229-4326  
Fax: 303-538-7556 or Office: 303-538-7649  
E-mail: [Dennis.Laurita@ThorntonCO.gov](mailto:Dennis.Laurita@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 Senior 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 (10<sup>th</sup>) Calendar Day prior to the date established for the submission of the Proposal. It shall be the responsibility of each proposing firm to verify that every addendum has been received prior to submitting a Proposal.

### B. SUBMITTAL DATE AND LOCATION

All Proposals must be received in the Contracts and Purchasing office located at Thornton City Hall, City of Thornton, 9500 Civic Center Drive, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326 or submitted via the BidnetDirect.com vendor portal **prior to 5:00 p.m. local time on October 11, 2023**. 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, Owner's Advisor Services PFAS Treatment, Project No. 23-127**", 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, Owner's Advisor Services PFAS Treatment, Project No. 23-127**", 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**

To be eligible to propose on this Project, a proposing firm must be identified as **minimally qualified**. To be **minimally qualified**, firms must have been engaged as an owner's advisor and as a design-build team-member on a water treatment project with individual total project values of at least thirty million dollars (\$30,000,000) within the past eight (8) years. In addition, the Owner's advisor must identify at least one (1) team member's experience with the Colorado Department of Health and Environment (CDPHE) and demonstrate having brokered successful permitting of a Water Treatment Plant of similar size and complexity.

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 fee (not-to-exceed price) structure based on the Services to be provided.

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

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

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## V. PROPOSAL PREPARATION

A. Proposals submitted shall contain all information as requested herein, and any additional information necessary to evaluate the overall benefit of the Proposal to Thornton.

1. 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. Exhibit “B” to the Agreement, “Owner’s Advisor’s Personnel and Subconsultant’s Listing,” 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. A Project timeline outlining the major tasks, phases, timeframes, and milestones necessary to complete the Project. Identify the specific employees and [subconsultants that will be involved in each task.

6. An estimate of labor resources needed by task or phase broken down by man-hours for each individual assigned to the Project, including subconsultant personnel. In addition, indicate total estimated cost for each task or phase by multiplying the applicable billable hourly rates by the proposed labor hours, and adding in subconsultant fees, and other estimated reimbursable expenses.
7. The proposed Exhibit C, Schedule of Charges, which is in Exhibit 2, Agreement, containing the billable hourly rate schedule of the proposing firm including the hourly rates for all personnel assigned to the Project team, subconsultant's fees, and rates for proposed reimbursable expenses such as mileage, equipment, printing, postage, courier service fees, etc. Reimbursable expense categories identified in the Reimbursable Expense Schedule must include all expenses for which the proposing firm will expect separate reimbursement. Expense categories not identified will not be reimbursed separately but are assumed to be included in the billable hourly rates or the fixed fee, whichever is applicable. Reimbursable expenses are reimbursed at cost. The proposed Schedule of Charges will be the sole basis of payment.
8. Proposed not-to-exceed cost for all Service, including all estimated reimbursable expenses.
9. A list of what portion of the Services, if any, will be subcontracted.
10. A list of at least five (5) references for which similar services have been provided. Include current contact names, addresses, and telephone numbers.
11. An executed Exhibit 3, Reference Authorization and Release Form.
12. 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.
13. 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.
14. Any other information deemed necessary by the proposing firm.



- 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.

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**VI. EXHIBIT 1**

**ACCEPTANCE OF CONDITIONS STATEMENT**

A. Proposing firm indicates acceptance of the following conditions:

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

(Signature)

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

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

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

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

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# AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

## (Owner's Advisor Services PFAS Treatment, Project No. 23-127)

This Professional Consulting Services Agreement for **Owner's Advisor Services PFAS Treatment, Project No. 23-127** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **City of Thornton**, a Colorado home rule municipality, whose address is 9500 Civic Center Drive, Thornton, CO 80229 ("Thornton") and **Business Name** whose principal place of business is located at Business Address ("Consultant, or may be referred to as Service Provider"). Each party may be referred to collectively as, the ("Parties") or individually as the ("Party").

### I. RECITALS

- A. Thornton requires Professional Consulting Services in connection with **Owner's Advisor Services PFAS Treatment, Project No. 23-127** (the "Project").
- B. On or about [Date], Thornton selected Consultant as the most qualified firm to provide the services described in this Agreement.
- C. Consultant selected by Thornton represents it has the requisite expertise and professional experience to perform the services this Project requires, and which Thornton needs, as described herein during the term of this Agreement.

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

### II. TERMS AND CONDITIONS

- A. **Definitions, Interpretation.** Capitalized terms not defined below shall have the meanings given them in the Contract Documents (defined below) where they are defined. Further, otherwise consistent with the context, the singular shall include the plural and the plural shall include the singular. The titles of articles and sections used in this Agreement are primarily for the convenience but may be used as aids in interpreting any provision herein.
  - 1. Agreement means this Agreement between Thornton and Consultant, including any amendments, change orders, and exhibits made part of the Agreement upon or after its execution.
  - 2. Contract Documents consist of those documents identified in the Agreement, and any change orders and amendments issued after execution of the Agreement.
  - 3. Day as referenced in any Contract Document refers to a Calendar Day of twenty-four (24) hours measured from midnight to the next midnight.

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

**B. Contract Documents.**

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

- b. This Agreement for Professional Consulting Services (together with Exhibits);
    - i. Exhibit A Consultant's General Scope Of Services
    - ii. Exhibit B Personnel and Subconsultants Listing
    - iii. Exhibit C Schedule Of Charges
  - c. Purchase Orders.
2. In the event there is a conflict between any of the above-listed documents, the provisions of the document listed first in order shall govern over those documents listed in descending order in subparagraph B.1 above after the first listed document
3. Consultant may need additional documents to perform the required Work and Services, or to clarify certain aspects of the Work and Services, that are not listed in Section B.1 above. Such documents, unless specifically identified as such, are not Contract Documents. These documents, by way of example include, but are not limited to:
- a. The Request for Proposals (including Addenda);
  - b. The Consultant's response to the Request for Proposals;
  - c. Other Thornton policies and procedures as applicable.
4. Consultant shall perform the Services with the staff identified in the attached **Exhibit B**, unless otherwise authorized in writing by Thornton.

**C. Project Description.**

Provide Owner's Advisor (OA) services to perform overall Project management, preparation of a treatment technology study, develop conceptual documents, advise on Colorado Department of Health and Environment (CDPHE) permitting requirements and variances, assist Thornton with completing the Purpose and Need Assessment (PNA) for submittal to CDPHE and Denver Water State Revolving Fund (DWSRF), strategize sequencing of Best Available Techniques (BAT) for both water treatment plants to meet compliance deadlines, assist in DWSRF and other grant submittals and documentation, advise on project delivery method for the Design Engineer/Contractor team (Design-Build (DB) or Construction Manager at Risk (CMAR)), develop the Request For Qualifications (RFQ)/Request For Proposal (RFP) and ensure the contract is properly solicited and awarded through a competitive RFQ/RFP process, provide oversight, review and management of the contract design deliverables, as well as provide operation recommendations.

The Owner's Advisor services will be utilized to assist Thornton in achieving the successful outcome of the Project, from Project conception through Final Design of the Project. Thornton anticipates the need for OA services for two to three years. Additional tasks may be added as the Project evolves, which may include Construction Management services.

- D. **Consultant's Scope of Services.** Upon receipt of a written Notice to Proceed from Thornton, Consultant acknowledges that its scope of services includes furnishing all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform and complete the Services described in the attached **Exhibit A**. ("Scope of Services" or "Services").
- E. **Term; Commencement and Termination Dates.** This Agreement shall commence on the date written above and shall terminate at such time when all of the Scope of Services in **Exhibit A** up to, and through the end of the Warranty Phase are complete, or upon Thornton providing Consultant with seven (7) Calendar Days advance written notice, whichever occurs first. In the event this Agreement is terminated by Thornton for convenience, Thornton shall issue a written Notice of Intent to Terminate and Thornton shall pay Consultant for all Services previously authorized and completed prior to the date of the Notice of Termination and Consultant shall not be entitled to profit or overhead on uncompleted Services. If, however, Consultant has substantially or materially breached the terms of this Agreement, Thornton shall have any remedy or right of set-off available at law and equity.
- F. **Compensation.**
1. **Remuneration.** Thornton agrees to pay Consultant's billable hourly rates and approved reimbursable expenses as set forth in the attached **Exhibit C, Schedule of Charges**, provided, however, the maximum amount Thornton will pay Consultant under this Agreement is not to exceed \_\_\_\_\_ dollars (\$) without a written amendment executed by the Parties.
  2. **Invoicing.**
    - a. Consultant shall prepare and send by electronic format a detailed monthly invoice to [ap.invoices@ThorntonCo.gov](mailto:ap.invoices@ThorntonCo.gov).
    - b. Invoices become due and payable thirty (30) days after date of receipt by Thornton of a complete and correct invoice.
    - c. Invoices shall reference the Purchase Order Number assigned by Thornton, and be itemized showing hourly breakdowns for personnel, and other charges.
    - d. Each invoice will show the total amount billed from the Commencement Date of the original Agreement, and any subsequently issued Purchase Orders and amendments that change the amount payable by Thornton under the terms 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 written Purchase Order issued by Thornton.

- e. Consultant shall break down invoices by the phases specified in the Scope of Work. Each phase shall be further itemized by cost for each completed task performed for that phase. Consultants will only invoice Thornton for work that is performed to Thornton's satisfaction, or the percentage of work satisfactorily performed for that phase, unless 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 by Thornton.

**G. Changes to Consultant's Scope of Services.**

1. A change in the Consultant's Scope of Services shall include any change or amendment of the Services, which is different from or additional to the Consultant's Scope of Services as defined in **Exhibit A** of this Agreement.

No change to the General Scope of Services, including any requested changes to contractually established billable/unit rates, shall be effective or paid by Thornton 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 Consultant proceeds without such written authorization, then 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 agreement.

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

1. Approval of Key Professionals. Consultant and/or the persons, personnel, subconsultants and named entities identified in the attached **Exhibit B shall perform the Services**, unless otherwise authorized in writing by Thornton. All of Consultant's key professional personnel identified in **Exhibit B** shall be assigned by Consultant or its subconsultant (including any subcontractors) to perform the Services under this Agreement. If Thornton requires Consultant to identify certain subcontractors, other entities, personnel or individuals ('Key Professionals') before the Agreement's Commencement Date for the purpose

of Thornton's review and acceptance, Consultant shall submit a list of Key Professionals, along with their résumés and information, describing each one's abilities to perform their assigned tasks no later than thirty (30) days before this Agreement's proposed Commencement Date. If Thornton does not respond within 15 days from receiving Consultant's list, all listed Key Professionals will be deemed approved by Thornton.

2. Replacement of Key Professionals. The Parties understand that Key Professionals will be engaged to perform their specialty Services required by this Agreement, and Consultant and its subconsultant shall retain Key Professionals for the term of this Agreement to the extent practicable and to the extent their specialties maximizes the quality of Services performed hereunder. If Consultant decides to replace a Key Professional, it shall notify Thornton in writing of the changes it desires to make. Thornton shall respond to Consultant regarding replacement of a Key Professional within fifteen (15) days from the date Thornton receives Consultant's request. Consultant shall not replace any Key Professional without Thornton's written approval, which will not be withheld unreasonably.
3. Performance by Key Professionals. If, during the term of this Agreement, Thornton determines that a Key Professional's performance is unacceptable, they will notify Consultant and give Consultant the time that Thornton considers reasonable to correct such performance. Thereafter, if a Key Professional's performance is still unacceptable, Thornton will notify Consultant to reassign the Key Professional and Consultant shall use its best efforts to obtain an adequate substitute within ten (10) days from the date of the notice.
4. Consultant's Subconsultants.
  - a. Thornton's Approval Required. Consultant may retain and subcontract with subconsultants listed in **Exhibit B, Consultant's Personnel and Subconsultants Listing**; however, Consultant shall not execute a final agreement with any other subconsultant without obtaining written approval from Thornton first. Consultant must submit a written description of the nature and extent of the Services a subconsultant will provide for Thornton's approval, and the subconsultant's name, address, professional experience and qualifications and any other important information. Thornton's approval of the subconsultant shall not relieve Consultant of any obligations under this Agreement. Since Consultant's representations and professional qualifications are the consideration for Thornton to enter into this Agreement, Thornton, for any reason, has the right to reject any proposed subconsultant it deems unqualified or unsuitable to perform the proposed Services, and to limit the number of subconsultants retained by Consultant.

- b. Conflict of Interest Prohibited. No Consultant shall retain any subconsultant to perform any Services under this Agreement if Consultant, by making a reasonable inquiry, knows or should know is connected with the sale or promotion of equipment or material used to perform any Services that would be a conflict of interest. However, in limited circumstances and at its discretion, Thornton may waive a conflict of interest in writing provided Consultant has fully disclosed the conflict of interest beforehand. If at any time, the Consultant becomes aware of a potential conflict of interest, it shall immediately notify Thornton in writing of the potential conflict. The notification shall contain all pertinent information to fully and accurately describe the conflict of interest. Thornton, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict continues to exist after it has given Consultant written notice describing the conflict.
5. Approval, Rejection of Consultant's Key Professionals, Personnel and Subconsultants. Thornton may, in its reasonable discretion, approve or reject any person or persons at any time working for Consultant. No acceptance by Thornton of any Key Professional, subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Thornton to reject defective Work.
6. Waiver. Consultant shall be fully responsible to Thornton for all acts and omissions of its subcontractors, Key Professionals and other persons performing or furnishing any Work or Services on behalf of Consultant just as Consultant is responsible for Consultant's own acts and omissions. Any agreement between Consultant and its approved subconsultant(s), Key Professionals and other persons must have a legally binding provision whereby they agree to waive all rights to make a claim of liability or payment against Thornton arising out of the performance of the Services under this Agreement. Nothing in the Contract Documents shall create any contractual relationship or obligation to pay any monies due to the same, except as the law may require.

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

1. All of the Services performed under this Agreement by Consultant shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of Thornton.
2. All applicable state and federal laws, county and city ordinances, licenses and regulations of all authorities having jurisdiction over this Agreement and the Services shall apply to this Agreement throughout and will be deemed to be included in this Agreement the same as though written out in full.

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 developed for this Project to Thornton. However, any reuse of Work Product by Thornton without prior written authorization by Consultant other than for the specific intended purpose of this Agreement will be at Thornton's risk.
3. Consultant shall provide Thornton with ten (10) days of advance written notice that it has Project Information and Work Product it intends to dispose of, during which time Thornton may take physical possession of such documents.

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

1. Consultant warrants that all Services performed under this Agreement shall comply with all applicable patent, trademark, and copyright laws, rules, regulations, and codes of the United States. Consultant shall not utilize any protected patent, trademark, or copyright in performance of the Services unless Consultant has obtained proper permission and all releases and other necessary documents. If Consultant specifies or uses any material, equipment, process, or procedure, that is protected, Consultant shall disclose such patents, trademarks, and copyrights in Consultant's deliverables.

2. Consultant releases, indemnifies, and holds harmless Thornton, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions, or proceedings of any kind or nature whatsoever, including attorneys' fees and costs, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of Services under this Agreement which infringes upon any patent, trademark, or copyright protected by law.

### III. GENERAL CONDITIONS

A. **Indemnification.** To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless Thornton, its officers, agents and employees, from and against all liability, judgments, damages or losses which arise out of, result from, or are in any manner connected with the Services to be performed under this Agreement, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of Consultant, any subconsultant of Consultant or Key Professionals, 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 further agrees to 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 to 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.	<b><u>Commercial General Liability Insurance</u></b>	<b>(MINIMUM LIMITS)</b>
a.	Each Occurrence	\$2,000,000
b.	Products/Completed Operations Aggregate	\$2,000,000
c.	Personal and Advertising Injury	\$2,000,000
d.	General Aggregate	\$4,000,000
e.	This policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of:	

- i. Premises-operations;

- ii. Products and completed operations including materials designed, furnished, and/or modified in any way by Consultant;
- iii. Independent subcontractors or subconsultants;
- iv. Contractual liability risk covering the indemnity obligations set forth in this Agreement; and
- v. Where applicable, liability resulting from explosion, collapse, or underground exposures. Where applicable, liability resulting from explosion, collapse, or underground exposures.

f. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

3. Professional Liability Insurance **(MINIMUM LIMITS)**

a. Each Claim \$2,000,000

b. Aggregate \$2,000,000

c. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

4. Automobile Liability Insurance. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Consultant's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.

5. Additional Insured. Consultant shall name Thornton, its officers, agents, and employees as additional insureds with respect to the commercial general liability and auto liability coverages required herein. A Certificate of Insurance shall be completed and forwarded, along with the Additional Insured Endorsements, to Thornton by Consultant's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Thornton **prior to commencement of any Services under this Agreement.**

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

City of Thornton  
Dennis Laurita, Contracts Supervisor  
9500 Civic Center Drive  
Thornton, CO 80229-4326

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

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

7. Failure to Insure. Failure on the part of Consultant or a subconsultant to procure or maintain policies providing the required coverages, conditions, and minimum limits **shall constitute a material breach of Agreement upon which Thornton may immediately terminate this Agreement**, or at its discretion, Thornton may procure, or renew any such policy, or any extended reporting period, and may pay any and all premiums in connection therewith, and all monies so paid by Thornton shall be repaid by Consultant to Thornton upon demand, or Thornton may offset the cost of such premiums against any monies due or that become due to Consultant from Thornton.

8. Other Insurance Requirements.

- a. From time to time, Thornton, by mutual agreement with Consultant, may require Consultant to obtain other insurance with varying limits against other insurable hazards relating to the Services.
- b. Consultant shall procure and maintain and shall cause any subconsultants to procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Thornton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

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

C. **Governmental Immunity.** The Parties understand and agree that Thornton, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time may be amended, or otherwise available to Thornton, its agents, officers, or employees.

D. **Independent Contractor.**

1. It is understood and agreed by and between the Parties that the status of Consultant shall be that of an independent contractor and of a person retained on a contractual basis to perform professional and/or technical services for limited periods of time and it is not intended, nor shall it be construed, that Consultant is an employee or officer of Thornton under Chapter VII of the City Charter, or Chapter 54 of the City Code, or for any purpose whatsoever.
2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Consultant** or any employee, agent or subconsultant of Consultant **is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Consultant or some other entity besides Thornton, that Consultant is not entitled to Workers' Compensation benefits from Thornton and that Consultant is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph are consistent with Consultant's insurance obligations which are set forth in this Agreement.



E. **Termination.**

1. **Termination for Convenience.**

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

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

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

F. **Venue / Law / Statute Of Limitations.** This Agreement shall be governed by the laws of the State of Colorado, notwithstanding its choice of law principles. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to this Agreement or the Services asserted by Consultant against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).

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

**THORNTON:**

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

**CONSULTANT:**

Company Name  
Attention:  
Address

- H. **Exhibits.** All documents marked and referred to as “Exhibits” in this Agreement are incorporated by this reference and are made a part of this Agreement.
- I. **Assignment of Agreement Not Permitted.** Consultant shall not be entitled to assign, pledge, or transfer its duties and rights, in whole or in part, under this Agreement, or any Work, Services, or its rights to any payment from Thornton without the prior written consent of Thornton, which Thornton may withhold in its sole discretion. Any approved assignee of Consultant’s interest in this Agreement, any Work or Services shall execute a written acknowledgement in a form satisfactory to Thornton expressly agreeing to be bound by all of its terms. No assignment shall relieve Consultant of primary liability under this Agreement. In this regard, Consultant understands that the performance of the scope of work is considered personal services under this Agreement.
- J. **General Warranty.** Consultant will faithfully perform the services required under this Agreement in accordance with standards of care, skill, training, diligence, and judgment provided by competent professionals who perform services of a similar nature as described in this Agreement.
- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of any such terms and conditions.
- L. **Inspection of Records.** In connection with the Services performed hereunder, Thornton and any of its duly authorized representatives shall have access to all of Consultant’s and subconsultant’s books, documents, papers, and any other records of Consultant and subconsultants that relate to the Services. Consultant further agrees that such records shall contain information concerning the personnel who performed the Services, the specific tasks they performed and the hours they worked. Consultant shall retain these records for three (3) years after termination of this Agreement.

- M. **Conflict of Interest.** Consultant agrees that it and its subsidiaries, affiliates, subconsultants, principals, or employees shall not engage in any transaction, activity, or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions, or Services of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of Thornton. Thornton, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Consultant written notice, which describes the conflict. Consultant shall have twenty (20) days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to Thornton.
- N. **Coordination of Services.** Consultant shall fully coordinate its Services with other consultants, contractors or other entities performing services on the Project that interfaces with or is affected in any way by Consultant's Services, and with Thornton or other interested governmental agencies.
- O. **Non-Discrimination.** Consultant, its agents, employees, contractors, and subconsultants shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, gender, religion, or mental or physical disability in any policy or practice.
- P. **Advertising and Public Disclosures.** Consultant shall not include any reference to this Agreement or to the Services performed hereunder in any of its advertising or public relations materials without first obtaining the written approval from Thornton. Any oral presentation or written materials related to Consultant's Services shall include only presentation materials, Work product, designs, renderings, and technical data that have been accepted by Thornton. Thornton shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the transmittal of any information to officials of Thornton, including without limitation, the Mayor or member or members of City Council.
- Q. **Other Project Work.** Consultant and its subsidiaries and affiliates shall not bid upon or otherwise attempt to perform any other work associated with this Project. Consultant shall require in its contracts with its subconsultants that they and their subsidiaries or affiliates shall not bid upon or otherwise attempt to perform any work associated with this Project other than the Services described in their written agreements unless specifically approved in writing by Thornton.
- R. **Time is of the Essence.** The Parties agree that in the performance of the terms and requirements of this Agreement by Consultant that time is of the essence.

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

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

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

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

ATTEST:

CITY OF THORNTON, COLORADO:

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

\_\_\_\_\_  
Sean Saddler, PE  
Support Services Director

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

## EXHIBIT A

### CONSULTANT'S GENERAL SCOPE OF SERVICES

This is EXHIBIT "A", referred to and incorporated in the Agreement for Owner's Advisor Services PFAS Treatment, ("Project").

#### **SUMMARY OF SERVICES**

Owner's Advisor (OA) shall be an advisor to Thornton ("Owner") to assist Owner in achieving the successful completion of the Project. The Agreement for Owner's Advisor Services is a phase-oriented agreement, as set forth below. Phases shall include, but not be limited to, overall Project management, preparation of a treatment technology study, development of Conceptual Documents, advise on Colorado Department of Health and Environment (CDPHE) permitting requirements and variances, assist Thornton in completing and submitting the Purpose and Need Assessment (PNA) to CDPHE and the Drinking Water State Revolving Fund (DWSRF), strategize sequencing of Best Available Techniques (BAT) for both water treatment plants to meet compliance deadlines, participate in public meetings, assist with DWSRF and other grant submittals and documentation, development of the Design-Build (DB) or Construction Manager at Risk (CMAR) solicitation or Request for Proposal (RFP), participation in the DB or CMAR solicitation and award, as well as oversight of the DB or CMAR during design.

The Owner may also have the Owner's Advisor conduct Construction Management services including oversight and management of the contract, assistance with commissioning, assistance through the warranty period. In the event Owner chooses to have Owner's Advisor perform these services, they shall be provided as Additional Services under Article B below.

#### **ARTICLE A — OWNER'S ADVISOR SERVICES**

##### **A.1 Advice and Administrative Phase**

A.1.1. During this phase, the OA shall:

- .1 Conduct a Project Kickoff Meeting with Thornton Staff to discuss OA responsibilities, limitations, Owner expectations, Owner and OA main contacts and roles, and communication procedures;
  - a. Clarify Owner's preliminary goals, objectives, constraints, and requirements of the Project;
- .2 Conduct data gathering meetings, as necessary, with the Thornton Staff, in order to obtain information and understand the desired outcome of the Project.

- .3 Meet at the Project site and review the existing field conditions. Subconsultants, Thornton's staff and other designated representatives shall also be present during this review.
- .4 Develop and maintain a schedule for the Project that shall include at a minimum the commencement date, major tasks and timeframes, key milestone dates, critical permitting and approvals tasks, substantial and final completion dates;
- .5 Conduct Project planning meetings bi-weekly or as recommended and agreed, as well as other meetings requested by Owner. The purpose of these meetings will be to review the Project status to ensure that the contract objectives and milestones are being achieved. Decisions, action items and issues shall be documented. Meeting minutes shall be prepared by the OA;
- .6 Prepare for and participate in Public Meetings as requested by Owner.
- .7 Provide document management of all Project related information, to include identification, organization and compilation of data;
- .8 Participate in coordination efforts between Owner's staff and other consultants, approving agencies and other representatives as deemed necessary for the Project in a responsive and timely manner; and
- .9 Identify all governing authorities having jurisdiction over and who are authorized to comment upon, oversee, approve, or permit any or all portions of the Project, and assist in obtaining approvals, variances and/or permits from authorities having jurisdiction over the Project.
- .10 Assist with DWSRF and other grant submittals and documentation.
  - a. Advise and Assist Owner in preparing and submitting the Purpose and Need Assessment (PNA) to CDPHE and DWSRF.

## **A.2 Treatment Technology Study Phase**

A.2.1 During this phase, the OA shall:

- .1 Conduct a Treatment Technology Study to assist Owner in determining the appropriate water treatment technology for each plant in the short-term and long-term based on proposed National Primary Drinking Water Regulations (NPDWR):
  - a. The OA shall identify, evaluate and present all reasonably feasible Best Available Techniques (BAT), including but not limited to Granular Activated Carbon, Ion Exchange, and membrane filtration methods, to the Owner. Although Powder



Activated Carbon (PAC) is not a BAT, it should be investigated as a short-term solution.;

- b. Strategize sequencing of BAT for both water treatment plants to meet NPDWR compliance deadlines.
- c. Factors to be considered in developing the Treatment Technology Study shall include, but not be limited to, inputs and consumables, PFAS removal to MCL and non-detect, and Health Advisory Level, taste and odor removal corrosion control, hardness, TDS, secondary benefits, filter turbidity, iron/manganese removal, Total Organic Compound (TOC) removal, treatment byproducts, emerging contaminants, log reduction, operation and maintenance flexibility/ease, future regulations, expandability, reliability, and resource recovery and disposal, peak and sustainable production yield taking into account processes that are regularly taken out of service for backwashes, chemical cleans, integrity testing or other regular maintenance, and reliability of manufacturer to provide prompt assistance for and/or replacement of equipment and consumables;
- d. Each feasible alternative shall include any ancillary analysis of all treatment techniques or processes, applied to the worst existing and anticipated future influent water quality, that will be required to meet Environmental Protection Agency, Colorado Department of Public Health and Environment, and Partnership for Safe Drinking Water effluent water quality minimums;
- e. Conduct an economic evaluation of each proposed process alternative. The evaluation shall include a Budget Estimate and Life-Cycle Cost (LCC) analysis and shall consider design, build, operation, maintenance and overhead expenses at a minimum;
- f. Prepare a projected cash flow based on the Project budget and timing of appropriations;
- g. Evaluate the feasibility of each process and assist Owner in the selection process by presenting alternate treatment technologies, answering questions, sharing opinions and facilitating consensus;
- h. Develop the logic and format for the study in consultation with Owner;
- i. Schedule, prepare for, and conduct a kickoff meeting and meetings at approximately fifty percent (50%) and ninety percent (90%) development of the Treatment Technology Study;

- j. Prepare and submit electronic copies of the report to Owner for review at the fifty percent (50%) and ninety percent (90%) development;
- k. Review each submittal with the Owner; and
- l. Address comments, changes in consultation with Owner and finalize the report.

A.2.2 The OA's services under the Treatment Technology Study Phase shall be considered complete on the date when an electronic copy of the final report has been delivered to and accepted by Owner.

### **A.3 Conceptual Documents Phase**

A.3.1 After Owner's acceptance of the final Treatment Technology Study, Owner's selection of a technology, and upon written authorization from Owner, the OA shall develop the following documents ("Conceptual Documents") which shall show or describe the character, scope and intent of the work to be performed:

- .1 Conceptual drawings;
- .2 A conceptual design report and specifications, which shall include design objectives, constraints, type of layout, capacity, plant performance criteria, effectiveness, efficiency, operability, flexibility, expandability, any other Owner's requirements for the Project; and
- .3 Other graphic or written materials as required or requested by Owner.

A.3.2 The OA shall update and revise the Budget Estimate and LLC with each submittal, which shall include:

- .1 Opinion of probable cost.
- .2 Contingencies for unknowns and risks. The OA shall justify magnitudes and types of contingencies (type of unknown and/or risk the contingency is intended to cover and its impact on budget).

A.3.3 Schedule, prepare for and conduct a kickoff meeting and meetings at approximately twenty-five percent (25%), fifty percent (50%), and ninety percent (90%) development of the Conceptual Documents.

A.3.4 Prepare and submit copies of the Conceptual Documents to Owner for review at twenty-five percent (25%), fifty percent (50%), and ninety percent (90%) development.

A.3.5 Review each submittal with the Owner.

- A.3.6 Address comments, changes in consultation with Owner and revise Conceptual Documents. Track decisions in Decision Log.
- A.3.7 The Final Conceptual Documents shall be sufficient enough in detail to issue an RFP for services, as determined by the Owner.
- A.3.8 The OA's services under the Conceptual Documents Phase shall be considered complete on the date when an electronic copy of the final Conceptual Documents, Budget Estimate and LCC has been accepted by Owner.

#### **A.4 RFP Phase**

A.4.1 After Owner's acceptance of the Conceptual Documents and the updated Budget Estimate and LLC, and upon written authorization by Owner to proceed, the OA shall:

- .1 Advise and assist Owner in developing the RFP package, including, but not limited to, assembling the package and reviewing the RFP package for accuracy;
- .2 Advise and Assist Owner in advertising and obtaining proposals and attend the pre-proposal conference;
- .3 Prepare addenda as appropriate to clarify or correct the RFP package;
- .4 Determine the acceptability of substitute materials and equipment proposed;
- .5 Advise and Assist Owner in the development of the selection criteria;
- .6 Consult with Owner on the acceptability of prospective bidders, engineers, subcontractors, suppliers, other persons and entities proposed by bidders for their respective portions of the work. Assist Owner in evaluating the proposals, including reference and background checks, shortlisting and scoring the bidders; preparing tabulation sheets;
- .7 Assist Owner in the selection of the bidders and in negotiating a contract with the bidders; and
- .8 Assist Owner in connection with any protests, re-bidding or re-negotiating of the contract.

A.4.2 The RFP Phase shall be considered complete upon execution of the contract between Owner and the selected bidder, upon cessation of negotiations with all prospective bidders, or upon Owner's decision to terminate the Agreement for OA Services for convenience.

## A.5 Design Phase

A.5.1 The Design Phase shall commence with the execution of the contract between Owner and the selected DB or CMAR (“Team”) and shall terminate upon acceptance of final design.

A.5.2 The OA shall consult and coordinate with Owner throughout the Design Phase, including:

- .1 Submit a peer review plan. The plan shall include the deliverables that will be reviewed, the types of reviews that will take place and how the review comments will be communicated (e.g. redline plans or provide a list for reviewers to enter comments and a column for resolution of disputes). Reviews shall include regulation compliance, conformance with the Contract Documents, overall functionality of processes and systems, value engineering, constructability and quality assurance review. Reviews shall include structured, independent reviews of all submittals, to include, but not be limited to, studies, design reports, calculations, drawings, specifications, schedules, cost estimates and other documents used to convey the design intent;
- .2 Provide and coordinate a full and independent peer review of all GMP proposals presented by the Team. Engage an independent third-party contractor to assist with this costing/negotiating effort. This review will include thirty percent (30%), sixty percent (60%), and ninety percent (90%) GMP reviews at a minimum and may involve separate phases of the Project if the Project advances in phases rather than as a whole. Owner requires that the OA will engage the services of a contractor suitable to Owner with significant relevant experience to provide independent opinions of cost and assistance with negotiations such that the Owner has a clear second opinion of cost to use in comparing costs and negotiating;
- .3 Attend, be an active participant and document meetings with the Team, such as conferences, Progress Meetings, and other Project-related meetings;
- .4 Provide timely review of value engineering during design where warranted;
- .5 Assist Owner in evaluating and determining the acceptability of any substitutions which may be proposed by the Team;

## **ARTICLE B — ADDITIONAL SERVICES**

- B.1 At the request of Owner, the OA shall perform Additional Services, which may include:
- .1 Construction Management Services from Project conception through the warranty period;
  - .2 Provide recommendations and facilitate presentations and award submittals to showcase the Project.
- B.2 All Additional Services shall be performed upon request by Owner and shall be governed by the terms and conditions in the Agreement for Owner's Advisor Services.
- B.3 The cost of Additional Services shall be negotiated with Owner on a lump sum basis or provided on a time and materials basis, whichever the Owner chooses.

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# EXHIBIT C

## SCHEDULE OF CHARGES

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

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

(Use additional page if necessary.)

**REIMBURSABLE EXPENSES:**

[NOTE TO EDITOR: When editing final Agreement for the awarded firm, modify below to delete language that is an instruction to proposers, such as “List all categories....”]

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

### VIII. EXHIBIT 3

## REFERENCE AUTHORIZATION AND RELEASE FORM

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

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Proposing Firm has submitted a sealed proposal to the City of Thornton (Thornton) for \_\_\_\_\_ Services for the \_\_\_\_\_, Project No. \_\_\_\_\_ (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