

CITY OF THORNTON

REQUEST FOR PROPOSALS

FOR

ENGINEERING SERVICES

CDBG MCALLISTER PARK SOCCER PITCH

PROJECT NO. 24-543

DECEMBER 2023

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III. NOTICE REQUEST FOR PROPOSALS

The City of Thornton, CO (“Thornton”) respectfully requests separate sealed Proposals for Engineering Services for **McAllister Park Soccer Pitch, Project No. 24-543 (23-183 Metro Stadium District – McAllister Turf, and 21-87 – CDBG Funding McAllister Park)** (hereinafter referred to as “Project”). Proposals will be received until **5:00 p.m.**, local time, **January 17, 2024**, in the Contract Administration Office, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326.

Approved Methods for Submission of Proposals:

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

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

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

Late Proposals will not be accepted under any circumstances.

Project Description:

The Project includes Design Services to develop an overall park master plan, gather public input and produce graphic and bid documents for rehabilitation of an approximate 6-acre neighborhood park located at 750 West 96th Avenue, Thornton, CO 80260 (See Attachment A -- Vicinity Map).

The goal of the Project is to develop a park master plan that will create an inclusive park that meets community needs based on public and staff input. Minimum requirements shall locate a new U12 soccer field (210’ length X 135’ width) constructed with artificial turf, irrigation system modifications, walking paths to the soccer field, shade shelter(s), landscape design to follow **Naturally Thornton** concepts that reduce traditional passive turf areas, site furniture with solar lighting. Other recreational amenities and improvements would be considered based on public input and budget.

The design and construction budget is approximately four hundred seventy thousand dollars (\$470,000.00). Notice to Proceed is expected Winter 2023. Design is scheduled for completion one hundred eighty (180) days from Notice to Proceed. Construction is scheduled to begin in 2024.

The design portion of the project is funded by a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) administered by the City of Thornton. Federal laws and regulations may be applicable such as the requirement for a contractor to be registered with SAM.gov to conduct business with the federal government. Other federal requirements are included in Exhibit 4.

To be minimally qualified for consideration for award, proposing firms must have successfully completed at least three (3) similar projects in the past five (5) years in Colorado that have a similar degree of complexity and cost.

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

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

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

An optional Pre-Proposal Conference to discuss the Project(s) will be held at **December 20, 2023, at 1:00 p.m. via teleconference**. Please contact the Contracts Administrator for this link. 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, McAllister Park Soccer Pitch, Project No. 24-543**", 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, McAllister Park Soccer Pitch, Project No. 24-543**".

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 Andrew Villarreal, Contract Administrator, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax 303-538-7556, or e-mail – Andrew.Villarreal@ThorntonCo.gov, 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays.


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First Advertisement: December 21, 2023, Northglenn-Thornton Sentinel

Second Advertisement: December 28, 2023, Northglenn-Thornton Sentinel

Third Advertisement: January 4, 2024, Northglenn-Thornton Sentinel

BY: 
Dennis Laurita
Contracts Supervisor

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IV. PROPOSAL INSTRUCTIONS AND INFORMATION

Thornton is soliciting written Proposals from qualified firms for Design Services for **McAllister Park Soccer Pitch, Project No. 24-543**. 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: Andrew Villarreal, Contracts Administrator
9500 Civic Center Drive
Thornton, CO 80229-4326
Fax: 303-538-7556
E-mail: Andrew.Villarreal@ThorntonCo.gov

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

B. SUBMITTAL DATE AND LOCATION

All Proposals must be received in the Contracts and Purchasing office located at Thornton City Hall, City of Thornton, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326 or submitted via the BidnetDirect.com vendor portal **prior to 5:00 p.m. local time on January 17, 2024**. 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, McAllister Park Soccer Pitch, Project No. 24-543"**, 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, McAllister Park Soccer Pitch, Project No. 24-543"**, 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 minimally qualified for consideration for award, proposing firm must have successfully completed three (3) projects in Colorado that have a similar degree of complexity and cost within the past five (5) years.

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

1. Responsiveness to the needs of Thornton and the degree to which the Proposal meets or exceeds the requirements of the RFP, including the time required to complete the Project, the proposed solutions offered, the means and methods of accomplishing the Services, and the Scope of Services offered. Please provide a schedule for review.
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 (lump-sum 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.

J. GENERAL BACKGROUND INFORMATION

The design and construction budget is approximately four hundred seventy thousand dollars (\$470,000.00). Notice to Proceed is expected Winter 2023. Design is scheduled for completion one hundred eighty (180) days from Notice to Proceed. Construction is scheduled to begin early in 2024.

The design portion of the project is funded by a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) administered by the City of Thornton. Federal laws and regulations may be applicable such as the requirement for a contractor to be registered with SAM.gov to conduct business with the federal government. Other federal requirements are included in Exhibit 4.

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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. The proposed Exhibit B, Consultant's Personnel and Subconsultants Listing, which is in Exhibit 2, Agreement, showing all personnel and subconsultants proposed for assignment to the Project team. Also submit resumes with education and work experience for key personnel.
 4. A written narrative that defines the methods and means by which the proposing firm will perform the Services outlined in this RFP.
 5. 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.
 7. The proposed Exhibit C, Schedule of Charges, which is in Exhibit 2, Agreement, containing the lump sum fee broken out by Project phase, 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. A list of what portion of the Services, if any, will be subcontracted.
 9. A list of at least five (5) references for which similar services have been provided. Include current contact names, addresses, and telephone numbers.
 10. An executed Exhibit 3, Reference Authorization and Release Form.
 11. 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.
 12. 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.
 13. 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.

VI. EXHIBIT 1

ACCEPTANCE OF CONDITIONS STATEMENT

A. Proposing firm indicates acceptance of the following conditions:

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

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

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

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

Proposing Firm Name: _____

Address: _____

Telephone Number: _____

Submitted By: _____

(Signature)

Title: _____

Date: _____

Attest (by officer if corporation) or Notary (if individual): _____

My Commission Expires (if notarized): _____

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VII. EXHIBIT 2

CDBG CONSULTANT AGREEMENT BETWEEN THE CITY OF THORNTON AND XXXX, INC. THORNTON PROJECT NUMBER 24-543

This Agreement for use of Community Development Block Grant (CDBG) Funds Awarded to the City of Thornton (hereinafter referred to as "Agreement") is entered into on this _____ day of _____, 20__ ("Effective Date") by and between City of Thornton, Adams County, State of Colorado, a home rule municipality (hereinafter called "Thornton" or the "City"), located at 9500 Civic Center Drive, Thornton, CO 80229 and XXXX (hereinafter referred to as "Consultant"), located at XXXX. Thornton and Consultant may be referred hereafter collectively as the "Parties," or individually as "Party."

I. RECITALS

Thornton has received funds from the United States Government under Title I of the Housing and Community Development (HUD) Act of 1974, Public Law 93-383 as modified; and

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and the Community Development Block Grant (CDBG) Program, under said Title I, is the development of viable urban communities by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate-income, and

Thornton desires to use CDBG funds awarded to Thornton from HUD for approved projects and activities, including projects administered by eligible CDBG Consultants, and

Consultant is An Engineer, performing Design services; and

City Council has approved using CDBG for this activity the 2021 Annual Action Plan 2023.

NOW, THEREFORE, for and in consideration of the monies to be received, covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. SCOPE OF SERVICES

A. Consultant agrees to lawfully perform and satisfactorily carry out the Services (as defined in Exhibit A), as budgeted, prescribed, and required in the following exhibits:

1. **Exhibit A, The Scope of Services;**
2. **Exhibit B, The Outcome Performance Measurement Report;** and
3. **Exhibit C, The Consultant Drawdown Request.**
4. **Exhibit 4 Required Contract Provisions Of Applicable Federal-Aid Construction Contracts.**
5. **Exhibit 5 Incorporated References to Applicable Federal Statutes, Codes Executive Orders, etc.**

All referenced and listed above exhibits, attached hereto, are by this reference incorporated into this Agreement.

- B. Any changes to the Services described in Exhibit A shall be approved by written amendment executed by both Parties. This is a Not-to-Exceed fixed fee Agreement, and the amount listed in the “Award Amount” section below shall cover all direct costs, services, materials, equipment, and supplies, used or expended, pursuant to this Agreement. CDBG funds shall not be used for indirect costs, and Consultant is responsible to pay any indirect costs.
- C. **General Compliance:** In addition, performance of Services involving any physical construction or improvements shall conform to applicable building permit and inspection requirements of Thornton’s Building Code’s jurisdiction and/or any other local applicable and related codes.

III. AWARD AMOUNT

The amount to be paid by Thornton to Consultant shall not exceed [XXXX] (“Award Amount”). The Award Amount will be released to Consultant in accordance with the requirements set forth in Exhibit A.

IV. TERM OF AGREEMENT

- A. **Term:** This Agreement shall begin on the Effective Date, and shall terminate when the Services described in Exhibit A are complete, or the timeframe stipulated for the Services has expired (defined as the “Period of Completion”), whichever is sooner, unless such time is extended by written amendment executed in the same manner as this Agreement.
- B. **Period of Completion:** Unless modified by written amendment, the Period of Completion is the last day of the month in the thirty-sixth (36th) month after the Effective Date.

C. **Extension of Term, Period of Completion:**

1. Thornton may, in its sole discretion and through written approval from the Contract Administrator, grant extensions to the Period of Completion of up to forty-five (45) Calendar Days when Thornton determines that such extensions are necessary for the satisfactory completion of the Services.
2. Extensions of the Period of Completion beyond forty-five (45) Calendar Days shall require approval of Thornton in the form of a written amendment to this Agreement. All Consultant requests for extensions of the Period of Completion shall be in writing and submitted to Thornton for review and written approval as herein provided. Upon such approval, Thornton shall endorse Consultant's request accordingly for and on behalf of Thornton, and it shall thereupon be appended to this Agreement and become an amendment hereof.

D. **Amendments:**

1. Either Party may request amendments to this Agreement at any time, but no amendment shall be binding unless it is mutually agreed upon in writing by the Parties to this Agreement. Course of performance, no matter how long it continues, shall not constitute an amendment to this Agreement. This paragraph notwithstanding, extensions in the Period of Completion shall be made in accordance with the provisions of Section III.C. above.
2. Any change in or new federal, state or local law, rule, Executive Order, Office of Management and Budget Circular, or other regulation under which this Scope of Services is to be performed which may constitutionally be applied to this Scope of Services and which, by its terms, is intended to be applied to this Scope of Services, shall be deemed to be incorporated into this Agreement.

V. METHOD OF PAYMENT

A. **Reimbursement:**

1. Consultant shall request reimbursement using the attached Exhibit C Consultant Drawdown Request, either on the basis of a one-time reimbursement upon completion of the Scope of Services, or on the basis of a monthly periodic reimbursement during the course of the Scope of Services as the Services progress.
2. Requests for periodic, partial reimbursements shall be in a form acceptable to Thornton, and shall be submitted to Thornton for review and approval. Requests for periodic, partial reimbursements shall not be submitted more frequently than two (2) times per month and shall be supported and documented on the basis of Consultant costs actually incurred on the Scope of Services during the period for which reimbursement is requested.

3. In no event shall Thornton be liable for or pay any extra costs, overruns, or additional amounts in excess of the fixed costs; provided, however, that this provision shall not prevent fixed costs in Exhibit A from being increased or decreased by a written amendment to this Agreement.
4. Thornton agrees to pay Consultant the Award Amount only from those funds paid to Thornton by HUD pursuant to the Funding Approval Agreement between Thornton and HUD for CDBG funds. Consultant shall be subject to the terms and conditions of said HUD Agreement.
5. Consultant covenants that all invoices and requests for reimbursements for compensation due under this Agreement shall be submitted no later than forty-five (45) days after the end of the Period of Completion, or after termination of this Agreement, whichever event occurs first. All invoices and requests for reimbursements shall be for performance of Services within the term of the Agreement.
6. All Services not performed within the term of the Agreement, and services performed outside the Scope of Services, shall not be eligible for reimbursement under this Agreement. Any request made after the forty-five (45) day period shall be considered untimely and may be denied, unless arrangements for additional days have been requested by the Consultant and approved by Thornton in writing in advance of the termination or expiration of this Agreement. Such approval by Thornton shall not be unreasonably withheld.
7. Consultant hereby waives all rights, interests, or claims to any funds or compensation from Thornton for Services rendered or costs incurred under this Agreement not invoiced or requested for reimbursement and made in writing to Thornton before the end of the forty-five (45) day period after the Period of Completion or termination, whichever event occurs first.
8. Thornton may elect and shall have the authority to pay CDBG funds in advance of expenditure by Consultant, at Thornton's sole discretion, when Program completion may be jeopardized due to unforeseen circumstances of Consultant, and changes to the Services are deemed necessary to meeting the goals of Thornton's Consolidated Plan and Annual Action Plan as amended. Advance payment must comply with 2 CFR 200 and Thornton's policies regarding advance payments.
9. Consultant shall comply with all federal laws, rules, and regulations prohibiting Consultant's recovery of duplicative benefits. Consultant acknowledges and agrees that it has not sought or applied for, has not received, and shall not seek benefits from any other source to be used for the same purpose as the funds received pursuant to this Agreement. Consultant further acknowledges and agrees that it has a procedure in place to prevent such duplication of benefits, and shall comply with such procedure during the term of this Agreement.

- B. **Program Income:** The Program shall not generate program income. Notwithstanding the foregoing, should the project generate program income, all such program income shall be returned to Thornton. Any program income in the possession of Consultant when the Agreement expires, or received after the Agreement's expiration, shall be paid to Thornton.
- C. **Source, Availability and Appropriation of CDBG Funds:**
1. Payments to Consultant are pursuant to, and contingent upon HUD awarding Thornton the CDBG funds. The obligation of Thornton for payments under this Agreement is limited to monies appropriated by Thornton under the U.S. Department of Housing and Urban Development (HUD) CDBG funds.
 2. If CDBG funds are not awarded to Thornton by HUD, this Agreement shall terminate with no further obligation on either Party. Thornton agrees that it will include this term in every contract into which it enters under which it agrees to pay CDBG monies, and for which it relies on CDBG monies for funding.
 3. Thornton includes this clause to protect itself and Consultant from any liability or responsibility, or any suit which might result from the discontinuance of CDBG funding for any reason. The Parties agree that (i) Thornton does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation.

VI. GENERAL CONDITIONS

A. **Consultant's Breach of Agreement:**

1. **Remedies for Noncompliance.** If Consultant fails to comply with federal statutes, regulations or the terms and conditions of this Agreement, Thornton may, in its sole discretion, impose additional conditions on Consultant, as described in 2 CFR § 200.207(b). Without limiting the foregoing, if Consultant fails to comply with federal statutes, regulations or the terms and conditions of this Agreement, Thornton may take one or more of the following actions:
 - a. Thornton may withhold payments or disbursements under this Agreement to Consultant pending correction of the noncompliance.
 - b. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

- c. Suspend or terminate this Agreement.
 - d. Recommend initiation of suspension or debarment proceedings as authorized under 2 CFR part 180 and federal awarding agency regulations.
 - e. Withhold further federal awards for the project or Program.
 - f. Take other remedies that may be legally available.
2. Setoff: Thornton may withhold payment of compensation to Consultant for the purpose of setoff until such time as the exact amount of damage incurred by Thornton, which would be due from Consultant, is determined and paid. Such damages may include funds that Thornton must return to HUD because of HUD's disqualification of the Scope of Services funded.
3. Notwithstanding any provision appearing to the contrary, Consultant shall not be relieved of liability to Thornton for damages sustained by Thornton by virtue of any breach of this Agreement by Consultant. Thornton may pursue any remedies available to it at law or in equity, including, without limitation, damages, specific performance, and criminal remedies.

B. Termination:

1. Termination for Cause:
- a. If, for any reason Consultant shall fail to substantially perform the Services required under this Agreement, or fails to ensure the performance of, by legal means if necessary, the Services called for herein with such diligence as will ensure its completion within the Period of Completion, or materially fails to comply with any of the terms, conditions, or other provisions of this Agreement which shall constitute a violation or breach of this Agreement, Thornton may, for cause, terminate this Agreement in advance of the end of the stated Period of Completion by giving written notice to Consultant at least five (5) working days in advance of the effective termination date, and shall state in the notice the reason or reasons for the termination.
 - b. In the event of Termination for Cause under this subparagraph, Consultant shall be paid for all Services satisfactorily completed up to the date of termination, less all amounts previously paid; provided, however, that Consultant shall not be paid nor be considered eligible for payment of termination expenses, incidental, direct or consequential costs, damages or loss of profits due to the termination.

- c. In addition to the other remedies available to it, in the event Thornton terminates this Agreement for cause as provided herein, Thornton retains the right and may, at its option, make written demand for repayment of, and Consultant shall immediately upon receipt of such written demand of Thornton, repay all sums received by Consultant from Thornton under this Agreement as of the date of said demand, plus interest thereon at the legal rate plus all expenses incurred by Thornton, including reasonable attorney's fees incurred in recovering said sums, except that Thornton may retain amounts which reflect payment for Services satisfactorily completed.

2. Termination for Convenience:

- a. Thornton: Thornton may terminate this Agreement without cause at any time before the end of the Period of Performance. In such event, Thornton shall give written notice to Consultant, and Consultant shall be paid for all Services satisfactorily completed up to the date of termination, less all amounts previously paid, and any other amount mutually agreed upon by the Parties for the documented direct, and incidental termination expenses due to the termination.
- b. Consultant: Consultant may terminate this Agreement at any time in advance of the end of the Period of Completion with the written consent of Thornton. Consultant shall give Thornton written notice of any such request to terminate at least fifteen (15) working days in advance of the effective date thereof and shall state in the notice the reason or reasons for the termination and the effective date of termination. Consultant shall be paid for all Services satisfactorily completed up to the date of termination, less all amounts previously paid; provided, however, Consultant shall pay or refund to Thornton, or Thornton may offset against any balance due or that becomes due Consultant, an amount as damages to Thornton sufficient to pay all costs and expenses incurred or obligated by Thornton in completing the Scope of Services, or contracting for its completion, which is in excess of the Award Amount or the cost of the Scope of Services plus Thornton's expenses. In addition to the foregoing, Consultant shall neither be paid nor be considered eligible for payment of termination expenses, incidental, direct or consequential costs or damages, or loss of profits due to the termination.

3. Termination by Mutual Agreement: The Parties may mutually agree to terminate this Agreement at any time. Any such agreement shall be in writing, signed by the Parties, and shall set forth, at a minimum, the termination conditions and the effective date of termination.

4. Non-appropriation: In the event that Thornton 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 Thornton does not appropriate such funds and upon prior written notice as provided for herein, terminate this Agreement without penalty and thereupon be released of further obligations pursuant thereto.
5. Termination Hearings and Appeals. Consultant retains the right to such hearing, appeal, or other administrative proceeding as Consultant is entitled to under applicable statutes or regulations.
6. Effect of Termination:
 - a. Upon termination of this Agreement for any reason or expiration of the Period of Completion, Thornton shall be entitled to allocate to other qualifying entities and programs any CDBG funds not utilized by Consultant for the Services described in Exhibit A or any assets which reverted to Thornton pursuant to this Agreement.
 - b. Records and Subcontracts. Upon any termination of this Agreement in advance of its Period of Completion date, all undelivered documents, maps, models, photographs, reports or copies thereof, materials, equipment, supplies, or other items prepared by Consultant or its subconsultants, and/or subconsultants for use in the Work, shall be delivered to Thornton in their state of preparation at the time of termination subject to the provisions of any termination Agreement or order providing otherwise. Consultant shall also immediately notify Thornton of all subcontracts, Purchase Orders or other commitments of Consultant, which shall be outstanding on the termination date, and shall take such action with respect thereto as the Parties hereto shall mutually determine. No termination hereunder shall relieve Consultant of its responsibilities to maintain records in accordance with this Agreement.
 - c. Reversion of Assets. Upon the completion or termination of this Agreement, Consultant shall transfer to Thornton any CDBG funds on hand and accounts receivable attributable to the use of CDBG funds.

C. Indemnification:

1. Consultant hereby agrees to defend, indemnify, and hold harmless Thornton, its appointed and elected officials, agents, and employees against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the Services performed under this Agreement (hereinafter called "Claims"). This

indemnity shall be interpreted in the broadest possible manner to indemnify Thornton for any acts or omissions of Consultant or its employees, agents, or subconsultants, either passive or active, including Thornton's concurrent negligence, whether active or passive, except for the sole negligence or willful misconduct of Thornton.

2. Consultant's duty to defend and indemnify Thornton shall arise at the time written notice of the Claim is first provided to Thornton, and upon Thornton notifying Consultant of receipt of such Claim regardless of whether the claimant has filed suit on the Claim. Consultant's duty to defend and indemnify Thornton shall arise even if Thornton is the only party sued by claimant and/or claimant alleges that Thornton's negligence or willful misconduct was the sole cause of claimant's damages.
3. Consultant shall defend any and all Claims which may be brought or threatened against Thornton with respect to this Agreement and will pay on behalf of Thornton any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce these indemnity obligations. Such payments on behalf of Thornton shall be in addition to any other legal remedies available to Thornton and shall not be considered Thornton's exclusive remedy.
4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Consultant under the terms of this indemnification obligation. Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for Thornton's protection. This indemnification obligation shall survive the expiration or termination of this Agreement.

D. Consultant Insurance:

1. General Conditions:
 - a. Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods, or Services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and during any warranty period, provided that such policy is an occurrence-based policy. If such policy is a claims based policy, then Consultant shall keep the required insurance coverage in force for a period of three (3) years after termination of the Agreement.
 - b. Each insurance policy shall be underwritten by an insurer licensed to do business in Colorado and rated as an VIII or better. Each policy shall contain a valid provision or endorsement stating "Should

any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to City of Thornton, Risk Management Division, Attention: Risk Management Administrator at 9500 Civic Center Drive, Thornton, CO 80229, via certified mail, return receipt requested. Such written notice shall be sent thirty (30) Calendar Days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) Calendar Days prior.” If any policy is in excess of deductible or self-insurance retention, Thornton shall be notified by Consultant.

- c. Consultant shall be responsible for the payment of any deductible or self-insurance retention. Thornton reserves the right to require Consultant to provide a bond, at no cost to Thornton, in the amount of the deductible or self-insurance retention to guarantee payment of claims.
 - d. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Consultant. Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
2. Proof of Insurance: Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant hereby agrees to provide a copy of the insurance certificate and the additional insured endorsements prior to execution of this Agreement, evidencing compliance with all the insurance requirements of this Agreement. Thornton’s acceptance of a copy of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant’s breach of this Agreement or of any of Thornton’s rights or remedies under this Agreement. Thornton’s Risk Management Administrator may require additional proof of insurance, including, but not limited to, policies and endorsements.
 3. Additional Insured: For General Liability and Auto Liability coverages, Consultant’s insurer shall name Thornton, its officers, agents, and employees, as additional insured(s).
 4. Waiver of Subrogation: For all required coverage(s), Consultant’s insurer shall waive subrogation rights against Thornton.
 5. Subconsultants: All Consultants, subconsultants, subconsultants, suppliers, or other entities providing goods or Services permitted or required by this Agreement shall be subject to all of the requirements herein, including all insurance coverage requirements.

6. Workers' Compensation Insurance/Employer's Liability Insurance: Consultant shall maintain Workers' Compensation coverage as required by applicable law for each work location, and shall maintain Employer's Liability insurance with limits as follows:
 - a. One hundred thousand dollars (\$100,000) for each bodily injury occurrence claim;
 - b. One hundred thousand dollars (\$100,000) for each bodily injury caused by disease claim; and
 - c. Five hundred thousand dollars (\$500,000) aggregate for all bodily injuries.
7. General Liability: Consultant shall maintain general liability insurance with limits of one million dollars (\$1,000,000) for each occurrence claim, one million dollars (\$1,000,000) for each personal and advertising injury claim, one million dollars (\$1,000,000) for products and completed operations for each occurrence, two million dollars (\$2,000,000) general aggregate, and fifty thousand dollars (\$50,000) on any one (1) damage to rented premises.
8. Automobile Liability: Consultant shall maintain Business Automobile Liability coverage with one million dollars (\$1,000,000) combined single limit for personal injury and property damage applicable to all owned, hired, and non-owned vehicles used in performing Services under this Agreement.
9. Additional Provisions:
 - a. If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, Consultant shall notify Thornton in writing within ten (10) Calendar Days and reinstate the aggregates required.
 - b. Each insurance policy shall also include the following provisions:
 - i. Unlimited defense costs in excess of policy limits;
 - ii. Contractual liability coverage covering the indemnification provisions of this Agreement;
 - iii. A severability of interests' provision;
 - iv. A waiver of exclusion for lawsuits by one insured against another;
 - v. A provision that coverage is primary; and

- vi. A provision that coverage is non-contributory with other coverage or self- insurance provided by Thornton.
 - c. For all general liability coverage, if the policy is a claims-made policy, then the retroactive date must be on or before the date of the Effective Date of this Agreement, or the first date when any goods were provided or Services performed, whichever is earlier.
 - d. In the event Consultant is unable to obtain inclusion in the policies of any such additional provision at reasonable cost, Consultant may request from Thornton's Risk Management Division, approval of an alternative to such additional provision, provided that approval of such alternative shall be at the Risk Management Division's sole discretion.
- E. **Notice:** All applicable invoices, statements, notices, inquiries, and replies, and all notices permitted or required under this Agreement, shall be addressed and served upon the respective representatives at the addresses below. Any notice required hereunder shall be in writing and shall be effectively served upon personal delivery receipted for, or if mailed, upon the first to occur of receipt, or the expiration of three (3) business days after deposit in first class certified U.S. mail, postage prepaid, return receipt requested sent to the Party at the address appearing below. The Parties may change their representative or their address at any time by written notice to the other Party. The following individuals are designated for the purposes of this Agreement as representatives of Thornton and Consultant (or their successors or assigns), respectively:
- THORNTON: City of Thornton
Community Connections – CDBG
9471 Dorothy Boulevard
Thornton, CO 80229
- CONSULTANT: XXXXX
- F. **Independent Consultant:** Consultant is an independent Consultant and not a Thornton employee. This Agreement shall not be construed to create an employer-employee, master and servant, partnership, or joint venture relationship between the Parties. Consultant is not required to work exclusively for Thornton and represents that it currently and actually performs services to others. Consultant shall notify Thornton if at any time it is not actually performing substantially similar services for other clients and is working exclusively, or almost exclusively, for Thornton. The fact that Consultant may choose for personal reasons not to seek other clients or additional sources of revenue shall not affect Consultant's status as an independent Consultant. Consultant maintains its own office at a separate location and Consultant will be solely responsible for all costs and expenses related to that office.

CONSULTANT UNDERSTANDS AND AGREES THAT: (A) CONSULTANT IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION INSURANCE BENEFITS UNLESS THOSE BENEFITS ARE PROVIDED BY CONSULTANT OR SOME ENTITY OTHER THAN THORNTON; AND (B) CONSULTANT IS OBLIGATED TO PAY FEDERAL, STATE, AND LOCAL INCOME TAX ON ANY MONEYS PAID AND/OR EARNED PURSUANT TO THIS AGREEMENT. THORNTON WILL NOT PROVIDE UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION INSURANCE BENEFITS AND WILL NOT MAKE FEDERAL, STATE, OR LOCAL WITHHOLDINGS.

- G. **Non-Assignability:** Consultant may sub-contract the performance of Services under this Agreement in whole or in part; however, the responsibility for the performance of this Agreement shall not be assigned or transferred by Consultant without the prior written consent of Thornton. Subcontracts or Purchase Orders for equipment, materials, or supplies, or for assistance in the performance hereof, are permissible where undertaken in accordance with applicable federal procurement requirements.
- H. **Successors:** Consultant covenants that the provisions of this Agreement shall be binding upon its heirs, successors, subconsultants, representatives, and agents.
- I. **Records and Reports:** Consultant shall provide Thornton with records and reports as further detailed in Exhibit A, Scope of Services, and Exhibit B, Outcome Performance Measurement Report.
- J. **No Discrimination In Employment:** In connection with the performance of Services under this Agreement, Consultant agrees not to discriminate in matters of hiring, promoting, or compensating against any person otherwise qualified solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, physical or mental disability, or status in any other group protected by applicable law; and further agrees to insert the foregoing provision in all subcontracts hereunder.

VII. ENVIRONMENTAL REVIEW PROCEDURES

- A. Funds awarded under this Agreement shall not be obligated or utilized for any activities requiring a release of funds by Thornton and HUD under the Environmental Review Procedures for the CDBG Program at 24 CFR Part 58 until such release is issued in writing by Thornton, as approved by HUD.
- B. Administrative costs, reasonable engineering and design costs, and costs of other exempt activities identified in 24 CFR Section 58.34(a)(1) through (10) do not require a release of funds by HUD. For categorically excluded activities listed in 24 CFR Section 58.35(a), Thornton must make and document a determination

that the activities are exempt because there are no circumstances which require compliance with any other federal laws and authorities as cited at 24 CFR Section 58.5 prior to Consultant incurring costs for such activities.

- C. For projects not exempt under Section 58.34 or categorically excluded under Section 58.35, the Consultant must perform an Environmental Assessment and Thornton must make a finding as described in 24 CFR Sections 58.36 through 58.45. The finding must be published and disseminated to the public by Thornton prior to Consultant incurring costs for such projects. No funds shall be distributed under this Agreement until a “finding of no significant impact” is established.

VIII. ADMINISTRATIVE REQUIREMENTS

- A. **General Compliance:** The Consultant agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Consultant does not assume Thornton’s environmental responsibilities described in 24 CFR 570.604 and (2) the Consultant does not assume Thornton’s responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Consultant also agrees to comply with all other applicable federal, state and local laws, rules, regulations, orders, ordinances, and policies governing the funds provided under this Agreement. The Consultant further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. **Uniform Administrative Requirements:** Consultant shall comply with the applicable uniform administrative requirements, as described in 2 CFR Part 200, Subparts B, C, and D.
- C. **Data Universal Numbering System:** Consultant shall register for a DUNS (Data Universal Numbering System) at <https://fedgov.dnb.com/webform/>.
- D. **System for Award Management:** Consultant shall register and maintain SAM (System for Award Management) status registration information at <https://www.sam.gov/SAM/> as required by 2 CFR 25.
- E. **Financial Management:**
1. **Accounting Standards:** Consultant agrees to comply with 2 CFR 200.302 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
 2. **Cost Principles:** Consultant shall administer the Program in conformance with 2 CFR Subpart E Cost Principles. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

F. **Procurement:**

1. **Compliance:** Consultant shall comply with current Thornton policies concerning the purchase of equipment, and shall maintain inventory records of all non-expendable personal property as defined by such policies as may be procured with funds provided herein. All Program assets (unexpended Program Income, property, equipment, etc.) shall revert to Thornton upon termination of this Agreement.
2. **OMB Standards:** Unless specified otherwise within this Agreement, the Consultant shall procure all materials, property, or Services in accordance with the requirements of 2 CFR 200.317-.326.
3. **Travel:** No travel outside the metropolitan area is authorized with funds provided under this Agreement.

IX. COMPLIANCE WITH APPLICABLE LAWS

A. At all times during the performance of this Agreement, Consultant and any subconsultants shall strictly adhere to all applicable federal, state, county, and city laws, orders, and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. Consultant authorized to undertake the Program activities awarded herein shall include in all of their subcontracts the federal regulations as stipulated by Thornton and HUD requirements. Applicable federal laws and regulations may include, but are not necessarily limited to, the following (the descriptions of the following federal laws and regulations are for general information purposes only, and Consultant and any subconsultants are required to comply with any and all applicable portions of all applicable federal laws and regulations):

1. **National Environmental Policy Act of 1969:** (42 USC 4321 et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500 - 1508) provides for establishment of national policy, goals, and procedures for protecting, restoring and enhancing environmental quality.
2. **National Historic Preservation Act of 1966:** (16 USC 470 et seq.), as amended, requires consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.
3. **Executive Order 11593, Protection and Enhancement of the Cultural Environment:** May 13, 1971 (36 FR 8921 et seq.) requires that federally funded projects contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, or archaeological significance.

4. The Archaeological and Historical Data Preservation Act of 1974: Amending the Reservoir Salvage Act of 1960 (16 USC 469 et seq.) provides for the preservation of historic and archaeological data that would be lost due to certain federally funded development and construction activities.
5. Executive Order 11988, Floodplain Management: May 24, 1977 (42 FR 26951 et seq.) prohibits the undertaking of certain activities in flood plains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.
6. Executive Order 11990, Protection of Wetlands: May 24, 1977 (42 FR 26961 et seq.) requires review of all actions proposed to be located in or appreciably affecting a wetland.
7. Safe Drinking Water Act of 1974: (42 USC 201, 300 et seq., 7401 et seq.) as amended, prohibits the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.
8. The Endangered Species Act of 1973: (16 USC 1531 et seq.) as amended, requires that actions authorized, funded, or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species.
9. The Wild and Scenic Rivers Act of 1968: (16 USC 1271 et seq.) as amended, prohibits federal assistance in the construction of any water resources project that would have a direct and adverse effect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.
10. The Clean Air Act of 1970: (42 USC 1857 et seq.) as amended, requires that federal assistance will not be given, and that a license or permit will not be issued, to any activity not conforming to the local government implementation plan for national primary and secondary ambient air quality standards.
11. HUD Environmental Criteria and Standards: (24 CFR Part 51) provides national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances, and suitable land uses for airport runway clear zones.
12. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970: Title III, Real Property Acquisition (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), provides for uniform and

equitable treatment of persons displaced from their homes, business, or farms by federal or federally assisted programs.

13. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970: Title II, Uniform Relocation Assistance (Pub. L. 91 646 and implementing regulations at 49 CFR Part 24 Subpart C, and HUD requirements at 24 CFR Part 42 and 24 CFR 570.606), provides for fair and equitable treatment of all persons displaced as a result of any federal or federally assisted program.
14. Davis-Bacon Fair Labor Standards Act: (40 USC 3141-3144, 3146, and 3147) requires that, on all contracts and sub-contracts which exceed two thousand dollars (\$2,000) in value or that include eight (8) or more residential units for federally assisted construction, alteration, or rehabilitation, laborers and mechanics employed by the CDBG Sub-recipient, general Consultants or subconsultants shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if eight [8] or more contiguous residential family units are involved).
15. Contract Work Hours and Safety Standards Act of 1962: (40 USC 3701-3708) requires that mechanics and laborers employed on federally assisted contracts which exceed two thousand dollars (\$2,000) be paid wages of not less than one and one-half (1½) times their basic wage rates for all hours worked in excess of forty (40) in a work week.
16. Copeland "Anti-Kickback" Act of 1934: (40 USC 3145) prohibits and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.
17. The Lead-based Paint Poisoning Prevention Act of 1971, (42 USC 4831): The Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35 and all other related federal regulations prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance; requires notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning; requiring inspection and testing of such housing and requires elimination of any lead-based paint hazards in such housing that is to be rehabilitated, modernized or improved under this Agreement.
18. Section 3 of the Housing and Community Development Act of 1968: and 24 CFR part 135 as amended, ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low- and very

low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

19. Section 109 of the Housing and Community Development Act of 1974: (42USC 5309) as amended, provides that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.
20. Title VI of the Civil Rights Act of 1964: (Pub. L. 88-352; 42 USC 2000 [d]) prohibits discrimination on the basis of race, color, religion or religious affiliation, or national origin in any program or activity receiving federal financial assistance.
21. The Fair Housing Act: (42 USC 3601-20) as amended, prohibits housing discrimination on the basis of race, color, religion, sex, national origin, handicap, and familial status.
22. Executive Order 11063: (1962) as amended by Executive Order 12259, requires equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex, or national origin in the sale or rental of housing built with federal assistance.
23. Executive Order 12372, Special Contract Condition Water or Sewer Facilities: Notwithstanding any other provision of this Agreement, no funds provided under this Agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt or written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. Thornton shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this Agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
24. Section 504 of the Rehabilitation Act of 1973: (29 USC 793) as amended provides that no otherwise qualified individual shall, solely by reason of a disability, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

25. Drug Free Workplace: Consultant shall comply with the Drug Free Workplace Act of 1988, as amended, and any regulations promulgated thereunder.

X. RECORD KEEPING, MONITORING AND REPORTS

- A. Reporting Requirements: Consultant shall comply with data collection requirements, which will be documented through the following reports. Thornton will provide templates for any applicable reports. All disbursement of funds is contingent upon Consultant's compliance with these requirements.
1. Outcome Performance Measurement Report (OPR): The OPR summarizes the funds leveraged and the number of clients served through the funding, as well as the income and demographic information associated with those clients. The OPRs are due quarterly, by the 15th of the following month. For example, the 1st quarter runs from January through March, therefore, the report is due by April 15th. Reports can be scanned and sent via e-mail to CDBG@ThorntonCO.gov or a hardcopy can be mailed to Thornton CDBG staff as long as it has the authorized representative's signature and date. Project status should be reported on, even if no Services have been provided. The outcomes shall be captured once the Services are completed, and must continue to be captured on a quarterly basis for a minimum of one (1) year. Said report shall be in a format provided in Exhibit B as approved by Thornton and shall be directly related to the Scope of Services attached hereto. Failure to submit said report(s) may constitute grounds for withholding reimbursement. The OPR requirement survives the expiration of this Agreement.
 2. Program Completion Report: Once Consultant completes the reporting of outcomes through the OPRs, Consultant will be required to complete and send a "Project Completion Report". Thornton CDBG staff will provide the report template to the Consultant. This report summarizes the project and the goals achieved throughout the Agreement timeframe and subsequent reporting period. Once this report is submitted and approved, the Scope of Services will be considered complete. The Project Completion Report requirement survives the expiration of this Agreement.
 3. HUD Related Information: If applicable, Consultant will be asked to submit information related to Section 3 of the HUD Act of 1968, as amended, Program Income, minority-owned businesses, women-owned businesses, and/or semi-annual labor standards. This information will be compiled by Thornton staff for all CDBG funded projects and submitted to HUD as required.

B. Record Retention:

1. The Consultant shall maintain all records required by the federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - c. Records required to determine the eligibility of activities;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
 - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
2. The Consultant shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years, unless otherwise specified herein. The retention period begins on the date of the submission of Thornton's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.
3. The Consultant shall maintain data demonstrating individuals' eligibility for Services provided. Such data shall include, but not be limited to, each individual's name, address, income level or other basis for determining eligibility, and description of Service provided. Such information shall be made available to Thornton for review upon request.

4. The Consultant must collect demographic information on each individual and must make this information available to Thornton's staff upon request. Consultant must retain these records for four (4) years from the date of completion of the CDBG funded activity. Please see the CDBG Guide to National Objective and Eligible Activities for Entitlement Communities for a list of the records to be maintained for each project. This document can be found online at:

<https://www.hudexchange.info/resource/89/community-development-block-grant-program-cdbg-guide-to-national-objectives-and-eligible-activities-for-entitlement-communities/>

- a. Notwithstanding the foregoing, at a minimum, the supporting data for each individual benefiting from Consultant's Program shall include the following:
- i. Unique identifier – name and address;
 - ii. If available, whether the head of household is female and/or disabled;
 - iii. The total income of the household*;
 - iv. If available, the total number of household members or related data sets;
 - v. HUD requires that both ethnicity and race data is collected. These categories are defined by HUD and only these categories may be used; and
 - vi. The ethnicity (Hispanic or Latino or Not Hispanic or Latino) of each individual served; and the race of each individual served:
 - White;
 - Black/African American;
 - Asian;
 - American Indian/Alaska Native;
 - Native Hawaiian/Other Pacific Islander;
 - American Indian/Alaska Native and White;
 - Asian and White;
 - Black/African American and White;
 - American Indian/Alaska Native and Black/African American; and
 - Other Multi-race (Please explain).

*For programs that must fulfill the national objective of low-to-moderate income activities for households, HUD national objective (24CFR 570.208), CDBG Consultant shall collect data that records

that one hundred percent (100%) of households benefited are low or moderate income. The income limitations are set by HUD annually and Thornton will be responsible for providing the latest income limitations to Consultant.

5. The Consultant understands that individuals' information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of Thornton's or Consultant's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
- C. **Access To Records:** Consultant shall furnish and cause each of its own subconsultants to furnish all information and reports required hereunder, and will permit access to its books, records, and accounts by Thornton, HUD or its agent, the Comptroller General of the United States or other authorized federal officials, for the purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
 - D. **Closeouts:** Consultant obligations to Thornton shall not end until all closeout requirements are completed as determined by Thornton. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of Program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, copies of transferred records, and receivable accounts to Thornton upon closeout or upon Thornton's request), completing the four (4) quarterly reports and annual report during the year after completion of public facility and housing projects, and determining the custodianship of records.
 - E. **Audits:** Where Services are performed under this Agreement and are undertaken by a Consultant, an audit shall be conducted and submitted to Thornton in accordance with the applicable requirements of the 2 CFR Part 200, Subpart F "Audit Requirements". If Consultant has expended less than seven hundred fifty thousand dollars (\$750,000) in a Fiscal Year, Consultant shall provide year-end financial information for each fiscal year in which Consultant has received funding from Thornton for this Program. Federal Regulations are incorporated by reference herein as described under 24 CFR Part 570 subpart A, C, D, J, K, M, O, and 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

XI. PERSONNEL AND PARTICIPANT CONDITIONS

- A. **Affirmatively Furthering Fair Housing:** Consultant shall affirmatively further fair housing in addition to conducting and administering its Program in conformity with the equal opportunity requirements of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, as required herein. Affirmatively furthering fair housing

(AFFH) means "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."

B. Political Activity And Lobbying:

1. Political Activity: Consultant, when Consultant is a public entity, shall comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) and the Intergovernmental Personnel Act of 1970, as Amended by Title VI of Civil Service Reform Act (Pub. L. 95-454 Section 4728) which limits the political activity of its employees. Consultant, when not a public entity, shall not contract, use, and/or commit any HUD funds to finance the use of facilities or equipment for political purposes or to engage in partisan political activities.
2. Lobbying: Consultant certifies by execution of this Agreement that, to the best of its knowledge and belief:
 - a. No federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract (collectively herein referred to as "Contract").
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any contract, the undersigned shall complete and submit Thornton Standard Form-LLL, "Disclosure Form to Report Lobbying" or approved Thornton form, in accordance with its instructions and which are available from Thornton's NS Authorized Representative.
 - c. Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative contracts) and that the Consultant and all sub-awardees shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. **Prohibition Against Discrimination Provisions:** Consultant shall ensure that no person in the United States shall on the ground of race, color, religion (in instances of fair housing), gender, national origin, disability (with respect to qualified individuals with disabilities), or familial status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any Program or Service conducted under this Agreement. Consultant is subject to the discrimination prohibition requirements under the following laws and authorities, including, but not limited to:

1. Housing and Community Development Act: Section 109 of the Housing and Community Development Act of 1974, as amended.
2. Age Discrimination Act of 1975: Age Discrimination Act of 1975 and the implementing regulations found at 24 CFR Part 146, but with the exceptions permitted therein.
3. Rehabilitation Act and American with Disabilities Act: Section 504 of the Rehabilitation Act of 1973, as amended, and as implemented by 24 CFR Part 8, and the Americans with Disabilities Act, codified at 42 U.S.C. Section 12101. In addition, the Consultant is subject to the requirements of the Architectural Barriers Act of 1968, and implementing regulations, incorporated herein by reference, with respect to accommodations for the physically disabled. Design, construction, and alteration of public facilities shall be made in such manner so as to ensure that physically disabled persons will have ready access to, and use of such buildings pursuant to the "Uniform Federal Accessibility Standards" as amended, which is incorporated herein by this reference.
4. Fair Housing: Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing Act, 42 U.S.C. 3600-3620) and Executive Order 11063, as amended by Executive Order 12259 and the implementing regulations in 24 CFR Part 107.

D. **Separation of Church and State Prohibition:** Pursuant to 24 CFR Section 570.200(j), Consultant shall not discriminate against any organization on the basis of the organization's religious character or affiliation. However, any organization that is directly funded with CDBG monies may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Programs or Services funded with CDBG monies.

E. **E.O. 11246 Equal Employment Opportunity Clause:** During the performance of this Agreement where construction costs shall exceed ten thousand dollars (\$10,000), Consultant agrees as follows:

1. **No Discrimination:** Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, gender, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Consultant agrees to post in conspicuous places available to employees and applicants for employment notices, setting forth the provisions of this nondiscrimination clause.
2. **Solicitations or Advertisements:** Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, or national origin.
3. **Labor Unions:** Consultant will send to each labor union or representative of workers with which Consultant has a collective bargaining contract or other contract or understanding, a notice advising the labor union or workers' representative of the Consultant's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. **Executive Order 11246:** Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. **Executive Order 11246 Reports:** Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Consultant's books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. **Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and Consultant may be declared ineligible for further government contracts in accordance with procedures authorized

in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

7. Inclusion of Provisions: Thornton and Consultant will include the provisions of paragraphs X.E.1 through X.E.6 in every subagreement or Purchase Order unless excepted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each subconsultant or vendor. Consultant will take such action with respect to any subagreement or Purchase Order as Thornton may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Consultant becomes involved in or is threatened with litigation with a subconsultant or vendor as a result of such direction by Thornton, Consultant may request to enter into such litigation to protect the interests of the Parties to this Agreement.
 8. Employment Information: Consultant further agrees to complete and submit to Thornton with its final invoice, employment information on Thornton's forms during the performance period of this Agreement, which covers the entire period of performance of this Agreement or from the beginning effective date to the successful completion of all activities under Terms of the Agreement, and/or the Scope of Services, whichever in length of time is shorter.
- F. **Minority And Women's Business Enterprises:** In complying with HUD instructions made pursuant to Executive Order 11625, 12432, and 12138 incorporated herein by reference, to foster and promote minority and women's business enterprises and with 2 CFR 200.321 to award a fair share of subcontracts to small businesses, minority business enterprises, and women's businesses enterprises, Consultant shall maintain documentation of its efforts to assure small, minority, and women's businesses are considered and used where possible as provided for under 2 CFR 200.321 which is incorporated herein by reference. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Consultant may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

- G. **Debarred Or Suspended Consultant:** Consultant shall not directly or indirectly use funds to employ, award contracts to, or otherwise engage the services of, or fund any Consultant during any period of debarment, suspension, or placement in ineligibility status, under the provisions of Executive Order 12549 and 2 CFR Part 180. Consultant shall submit to Thornton with this Agreement ownership information, and shall submit to Thornton any and all subconsultant's firm names and subconsultant ownership information within five (5) working days after a contract or understanding has been executed or reached between Consultant and subconsultant.
- H. **Performance Monitoring:** Thornton will monitor the performance of Consultant against goals and performance standards as stated above. Substandard performance as determined by Thornton will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by Consultant within a reasonable period of time after being notified by Thornton, Agreement suspension or termination procedures will be initiated.
- I. **Conflict Of Interest:** Consultant agrees to abide by the provisions of 24 CFR 570.611, which include, but are not limited to, the following:
1. Consultant shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by federal funds.
 2. No employee, officer, or agent of Consultant shall participate in the selection, or in the award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
 3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG assisted Services, or with respect to the proceeds from the CDBG assisted Services, either for themselves or those with whom they have business or immediate family ties during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of Thornton, Consultant, or any designated public agency.
- J. **Integrated Document:** This Agreement, including all exhibits, embodies the entire agreement and understanding between Thornton and Consultant. No verbal agreements or conversation with any officer, agent, or employee of Thornton, or Consultant prior to or subsequent to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement.

- K. **Incorporation By Reference**: All of the parts of this Agreement and those which may become properly appended hereto, and all applicable federal, state, and local laws, rules, regulations, circulars, Executive Orders pertaining to the CDBG Program, and this Scope of Services, and the Funding Approval/Agreement executed by HUD and Thornton, and any other document referenced for incorporation are incorporated herein by this reference. Any Consultant or subconsultants must abide by all CDBG regulations incorporated into and outlined in 24 CFR 570 subpart A, C, D, J, K, M, N, and O. The CFR can be found at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.
- L. **Severability Clause**: The declaration by any court or other binding legal authority that any provision of this Agreement is invalid or unenforceable shall not affect the legality and enforceability of any other provision of this Agreement.
- M. **Survival Of Terms**: Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement, and the exhibits and attachments hereto, which may require continued performance or compliance beyond the termination date of this Agreement, shall survive such termination date and shall be enforceable as provided herein in the event of a failure to perform or comply by a Party to this Agreement.
- O. **Governmental Immunity**: This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, Thornton and its past and present directors, officers, employees, volunteers and agents under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on the day, month, and year first above written.

APPROVED AS TO LEGAL FORM:
FOR Tami Yellico, City Attorney

CITY OF THORNTON, COLORADO:

By: _____
Michael Hickman,
Senior Assistant 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

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EXHIBIT A

CONSULTANT'S SCOPE OF SERVICES

MCALLISTER PARK SOCCER PITCH

PROJECT NO. 24-543

Project Description:

The Project includes the design services necessary to develop an overall site plan, gather public input and produce graphic and bid documents for rehabilitation of a 6-acre neighborhood park located at 750 West 96th Avenue, Thornton, CO 80260 (See Attachment A – Vicinity Map).

The goal of the Project is to develop a park master plan that will create an inclusive park that meets community needs based on public and staff input. Minimum requirements shall locate a new U12 soccer field (210' length X 135' width) constructed with artificial turf, irrigation system modifications, walking paths to the soccer field, shade shelter(s), landscape design to follow **Naturally Thornton** concepts that reduce traditional passive turf areas, site furniture with solar lighting. Other recreational amenities and improvements would be considered based on public input and budget.

The design and construction budget is approximately four hundred seventy thousand dollars (\$470,000.00). Notice to Proceed is expected fall 2023. Design is scheduled for completion one hundred eighty (180) days from Notice to Proceed. Construction is scheduled to begin early 2024.

DESCRIPTION OF WORK TO BE DONE

Thornton requires that the following architectural, landscape, graphic, irrigation and engineering services be performed by the Consultant as it relates to the above-described Project and constitutes the basis for this Agreement. The Work includes the necessary design services to develop a formal bid ready set of construction plans and specifications including, but not limited to:

- A site improvement color display graphic.
- Irrigation plan to modify the existing irrigation system.
- Overall site plan and details including dedicated space for public art, placement for a U12 soccer field, walking path, shade shelter(s).
- Landscape plan to showcase **Naturally Thornton** design that improves wildlife and pollinator habitat and where a large percentage of the passive turf area is replaced with irrigated native grass and water-wise woodland groupings, with turf grass remaining in flatter, more traditionally active recreation areas.
- Grading, utility, sediment, erosion control and Storm Water Management plans.
- Consideration of other site amenities as budget and public input allow such as disc golf, volleyball, fishing, improved bus stop areas, updated LED solar lighting.

Thornton's GIS map of existing utilities for the approximate 6-acre site is provided for reference in Attachment B – Water, Sanitary, Storm, and Irrigation.

Summary of services and deliverables include:

- Conceptual, preliminary and final design plans for review in pdf format; final plans and as-builts in pdf and AutoCAD; Specifications, Storm Water Management Plan (SWMP) following the city's template, Schedule of Values in Microsoft Word and pdf format and 24"x 36" color rendering of proposed park improvements.
- Field and Final Office Review and CD-level cost opinions with construction specifications and bid documents, including proposed Submittal Log.
- Attendance at one (1) general contractor Pre-Bid Meeting before bid submittal and one Pre-Construction Meeting with the awarded contractor before groundbreaking.
- Attendance at one (1) public meetings or workshops to obtain community input, including a per meeting cost in the proposal for any additional public meetings that may be added during the design process.
- Attendance during construction meetings, review/approval of submittals and opinions on change order requests.
- Attendance at one Initial Acceptance walkthrough.
- AutoCAD As-Built plans based on installing contractor's field annotated redline plans.
- Attendance of one (1) Final Acceptance/Warranty walkthrough.

The Services shall be completed in phases as further described below.

I. Information Available

Thornton will provide the Consultant with available information related to the Project. Information that includes Thornton's standard front end documents for construction contracts, utility maps, GIS files, aerial photos, Thornton Irrigation, Park and Native Seed/Landscape Design Guidelines, Thornton Standards for Design and Construction for Public and Private Improvements, specification examples from similar projects, Thornton's SWMP template and/or other existing available information related to the site. The Consultant shall be responsible for verifying the information supplied by Thornton. The documentation given to the Consultant is for information only, and Thornton does not guarantee its accuracy. The Consultant shall not utilize aerial photography supplied by Thornton to the Consultant for any purpose other than Thornton's Project.

II. Preliminary Design Phase

- A. The Consultant shall attend a Project Kickoff Meeting with Thornton staff.
- B. The Consultant shall conduct data gathering meetings, as necessary, with the Thornton Infrastructure, Parks, Recreation & Community Programs or other Departments in order to obtain information and understand the desired outcome of the Project. The Consultant shall plan to attend a minimum of one (1) meeting during this task.

- C. It is Thornton's intent to conduct one (1) Zoom Public Meeting during the Preliminary Design Phase to gather public input regarding amenities for the park and address citizen concerns. Thornton will provide the Zoom platform and prepare and distribute notices for the Public Meeting. The Consultant shall prepare graphic presentation materials to provide an overview of the project and a presentation to citizens as appropriate. The Consultant shall document the proceedings of these meetings and shall assist Thornton in addressing and resolving questions.

The Consultant shall provide webpage ready graphics to the city for posting on the city website and social media throughout the design process including before and after the Public Meeting.

- D. The Consultant shall meet at the Project site and review the existing field conditions. Sub consultants, Thornton's staff and other designated representatives shall be present during this review.

- E. Stormwater Sediment and Erosion Control and Stormwater Management Plan.

1. The Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division (WQCD), through the Municipal Separate Storm Sewer System (MS4) permit issued to Thornton, requires Thornton to control and reduce the discharge of pollutants to protect stormwater quality and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act and the Colorado Discharge Permit Regulations (Colorado Regulation 61). The MS4 permit requires the implementation of a program to reduce the discharge from public and private construction sites.
2. Pursuant to Thornton's stormwater program, the Consultant shall develop designs and prepare drawings and specifications for stormwater quality control measures (CM) for sediment and erosion control to conform to the latest edition of Urban Drainage Criteria Manual Volume III or CDOT M-Standards.
3. The Consultant shall develop a Stormwater Management Plan (SWMP) as required and defined in the CDPS General Permit for Stormwater Discharges Associated with Construction Activity (Permit No. COR-400000). The Consultant shall develop designs and prepare drawings and specifications for stormwater quality control measures for sediment and erosion control to conform to the latest edition of Urban Drainage Criteria Manual Volume III or CDOT M-Standards and in compliance with the CDPS General Permit for Stormwater Discharges Associated with Construction Activity (Permit No. COR-400000) from CDPHE. The Consultant shall develop a Stormwater Management Plan (SWMP) as required and defined in the CDPS General Permit for Stormwater

Discharges Associated with Construction Activity (Permit No. COR-400000).

4. The Consultant shall develop temporary sediment and erosion control drawings and details to control construction stormwater runoff. Sediment and erosion controls are required for all construction in Thornton.
 5. The Consultant shall design permanent water quality CMs for Capital Improvement Projects that disturb one (1) or more acres, as well as for projects that disturb less than one (1) acre that are part of a larger common plan of development or sale. The requirement does not apply to excluded projects as defined in the MS4 permit.
 6. The design criteria for water quality CMs shall be as described in the latest edition of Urban Drainage and Flood Control District (UDFCD) Criteria Manual Volume III.
- F. The Consultant shall contact the Utility Notification Center for utility marking, shall review United Power, Xcel Energy, Qwest, Comcast, AT&T, Level 3, Thornton signal and fiber, water, sanitary and storm sewer or other applicable utilities and other private utility provider maps, as required, to accurately depict existing utility locations, depths and points. The Consultant shall determine whether the level of accuracy thus provided is adequate; if it is not, the Consultant shall be responsible for establishing such accuracy through other appropriate means such as surveying and potholing. The Consultant is responsible to pay the cost for the first six (6) potholing locations in the not-to-exceed fee. If additional pothole locations are necessary, the Consultant shall be compensated at the unit price provided in the schedule of charges for additional locations when agreed to by Thornton.
- G. Consultant shall provide utility plans for the Project that comply with the new 811 law, ASCE 38 Standard and Senate Bill 18-167. ASCE quality level B shall be attempted to be achieved, and a Colorado Professional Engineer shall prepare and stamp plans.
- H. The Consultant shall coordinate directly with Xcel Energy for design and costs of necessary power service and connections to the proposed site amenities. The Consultant shall provide Xcel Energy the necessary power requirements for the proposed recreational amenities and review and approve Xcel Energy's designs based those loads. The Consultant shall also coordinate design and costs with Xcel Energy to relocate any services that will be affected by proposed improvements.
- I. The Consultant shall provide the necessary field survey, using Thornton's control points, to identify existing features necessary to accurately complete the design of the Project. All features shall be shown within fifty (50) feet of the

proposed work area. The survey work shall be performed by a licensed surveyor registered to practice surveying in the State of Colorado. The Work shall include, but not be limited to, the following:

1. Topographic information with a 1' contours.
2. Site improvements, including playground, sport court, parking lot.
3. Landscape elements including signage, fences, gates, trails, plant materials, sprinkler vaults, lighting, water features, etc.
4. Surface treatments including pavements, curb and gutter, curb ramps, driveways, steps, etc.
5. All structures.
6. All public and private utilities, including but not limited to: storm pipes, irrigation lines, poles, vaults, hydrants, cabinets, power lines, street lights, etc.
7. All easements, including easements for Thornton owned utilities.
8. Street addresses of building structures adjacent to the park.
9. All property lines and corners.

This section is not intended to require the Consultant to gain access into the rear yards of private property. The location of improvements on private property and footprints of adjacent homes may be approximated.

- J. The Consultant shall plan and provide any required traffic control for the survey, testing or design process for field activities which interfere with vehicular, bicycle or pedestrian traffic operations within existing roadways, sidewalks, trails or parking areas. Traffic control operations will be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) as well as the American Traffic Safety Services Association's ATSSA Guide for Work Area Traffic Control. Consultant shall submit their traffic control plan to Thornton Traffic and Operations Division and obtain the necessary permit(s).
- K. The Consultant shall initiate applications for reviews and permits required of other governmental and non-governmental agencies, when applicable. The Consultant shall initiate meetings with Thornton's Building Department to obtain preliminary information of building code requirements, when applicable.
- L. The Consultant shall provide a Geotechnical Report with the necessary number of geotechnical borings or pits to determine soil properties and make recommendations on the design of the applicable elements including but not

limited to pond rehabilitation, pavement design, structure foundations, retaining structures, pipe bedding, backfill, grading, compaction and waterproofing, if applicable. The Consultant is responsible to pay the cost for the first six (6) borings and/or test pits in the not-to-exceed fee. If Thornton and the Consultant agree that additional borings and/or test pits are necessary, Consultant shall be compensated at the unit price provided in the schedule of charges. A copy of Geotechnical Report and summary of results and recommendations shall be provided to Thornton.

- M. Based on input from Thornton, the public meeting and from thorough site investigations and analyses performed independently by the Consultant, the Consultant shall prepare and submit the following site documents for internal review. One alternative or a combination of the two will be selected for further development into construction documents.
1. Development of two (2) conceptual thirty percent (30%) Schematic Design alternatives, with description of and feasibility of proposed park rehabilitation and improvements.
 2. Engineers Estimate of Probable Construction Cost for each proposed amenity and each alternative. Thornton requires that a construction contingency allowance of at least twenty percent (20%) of the Project construction budget be reserved and carried as a separate line item in all Schematic Design cost estimates. Should the cost estimates prepared exceed the currently approved budget, Consultant shall prepare a list of possible design alternates to bring the design back within budget. Thornton will either approve the incorporation of some or all of the suggestions into the next design phase and/or amend the budget prior to commencing with the next phase of design.
 3. Preliminary land survey drawings.
 4. Public Meeting summary including attendance list.
 5. Summary of utilities, grading, lighting issues and/or concerns and recommendations moving forward. Any other useful information for evaluation of the alternatives.
 6. Thornton will require a minimum of seven (7) Calendar Days to review the submitted information.
- N. After Schematic Design review, selection and/or consolidation, the Consultant shall prepare architectural and engineering designs and produce appropriate drawings and specifications, to approximately the sixty percent (60%) complete stage, for the selected design alternative.

Drawings shall be twenty-two inches (22") by thirty-four inches (34") or twenty-four (24) inches by thirty-six (36) inches in size, with a plan scale of one (1) inch = twenty (20) feet; for building plans use a scale of a quarter (1/4) inch = one (1) foot for small projects or partial plans and an eighth (1/8) inch = one (1) foot for larger projects, or as otherwise appropriate and acceptable to Thornton. All drawing graphics shall fit on eleven inch (11") by seventeen inch (17") paper when reduced to half size. All graphics, including text and dimensions, shall be legible when reduced to half size. Drawing graphics or notes shall not be obscured under the binding. Refer to the Final Design Phase herein for specification format requirements.

The Consultant shall perform a thorough coordination review of all drawings and specifications, including Sub consultant drawings and specifications, and correct any discrepancies. The drawings shall show, at a minimum, all existing and proposed features both above and below the ground including but not limited to streets, sidewalks, fences, gates, utilities, signs, fixtures, pavements, plantings, trails, recreational amenities, water, sewer and electrical services, and other proposed utilities such as storm sewer, telephone, cable, structures, including foundation and framing plans, elevations, sections, details, schedules for architectural, structural, mechanical, electrical, plumbing, fire protection, voice data or surveillance.

- O. The Consultant shall expand on survey information provided in the 30% Schematic Design Phase to provide information necessary for the design and necessary for construction of the Project. This information shall be shown on the drawings and shall include, but not be limited to, the following:
1. General.
The Consultant shall fully describe the benchmark utilized for vertical control, including the specific datum or origin of the benchmark. The Consultant shall provide the specific datum of any USGS information (i.e., NAVD 88, NGVD 29 etc.). More than one (1) control point must be used to develop the horizontal control for the Project. The control points utilized for horizontal control must be completely described to allow the points to be found by an individual who is unfamiliar with the area.
 2. Piped facilities.
The Consultant shall begin the stationing for any gravity pipe system at the low-end invert connection point, and continue through manholes until the termination connection point.
 3. Streets.
The Consultant shall begin the stationing for streets with 0+00 wherever practical. Stationing shall be Project Control Line (or Center Line) stationing with adequate offsets identified. If the Consultant utilizes a separate stationing system which is included for a line other than the Project Control Line, then the Consultant shall identify the ends of these

lines by offsets from a specific set of Project Control Line stations. The Consultant shall provide adequate reference to the Project Control Line, including stationing and offsets for any grade lines which are non-parallel to the Project Control Line. Designs with a constantly varying street template are discouraged.

- P. The Consultant shall provide drawing sheets which shall include, but not be limited to, the following:
1. A Title Sheet with Thornton's approval signature block, a location map, the Project name, address and Capital Improvement Project number, issue block with dates and revision number, summary of applicable codes and standards, Drawing Index, sheet number block, space for professional stamp, name, street address, phone, fax and email address of Consultant and all Sub consultants.
 2. Plan views, including but not limited to: survey control drawings, existing conditions, erosion control, demolition, grading, utilities, overall site improvements with project limits, site and street lighting, structures, landscape and irrigation.
 3. Profiles, including but not limited to: sanitary sewer and storm water design and modifications, utilities including lights, retaining walls, curb and gutter, trails, shade pavilions, etc.
 4. Sections, including but not limited to: typical sections, concrete, asphalt, excavations, foundations, retaining walls, etc.
 5. Details, including typical details but not limited to: curb and gutter, curb ramps, manholes, paving, excavations and backfill, drainage inlets and outlets, hardscape, bridges, signage, pavilions/shade structures and foundations, site furnishings, site lighting, plumbing, plantings, irrigation, etc.
 6. Elevations, including typical interior and exterior elevations.
 7. An irrigation plan, along with proposed details and service connections. The plan shall include the address of the irrigation tap, show main lines and a sprinkler head layout and shall include scheduling information confirming the ability of the system to operate in accordance with Thornton's Irrigation Design Guidelines and Standards and Specifications for the Design and Construction of Public Improvements.
 8. Landscaping plan including layouts of hardscape, site furniture, lighting, location of and schedule of plant materials.
 9. Non-potable pond and pump house rehabilitation.

10. Play amenities and equipment layout and color concepts.
11. Staging area plan, site access restriction plan.
12. Traffic control plan, if necessary.
13. Lighting and power plan as developed in coordination with Xcel Energy to bring power to the site, if applicable, including addresses of site lighting and additional street light standards.
14. Sediment and erosion control plan, SWMP.

Q. The Consultant shall prepare preliminary technical specifications to describe the elements of work proposed. In general, the technical specifications will be as detailed as possible for all work to be performed. All technical specifications shall be coordinated with Thornton's General and Special Conditions and shall not repeat or conflict with any information contained in the General and Special Conditions or other standard Thornton front end contract documents.

The technical specifications shall not make any generalized blanket references to city of Thornton Standards and Specifications, to CDOT Specifications or to other national standards. If any sections of these standards and specifications are to be included by reference, the Project technical specifications shall cite specific chapters and/or paragraphs of the reference standards.

The city of Thornton Standards and Specifications are intended to be the minimum standards acceptable on private development projects and do not necessarily represent the technical requirements Thornton wishes to achieve on a particular Thornton project. Obtain approval in writing from Thornton prior to citing these reference standards and specifications. Performance specifications, in lieu of prescriptive specifications, shall only be used with the prior written approval of Thornton.

The technical specifications document must be prepared without section breaks (use page breaks at end of each section) and the page numbering shall be sequential and located in the footer at the bottom center of the page.

The Consultant shall prepare a Technical Specification Index/Table of Contents, Project Summary and Overall Submittal List. Refer to Final Design Phase, paragraph K.1. for additional format requirements for technical specifications.

For projects which utilize a unit price contract for construction, the Consultant shall include information on the method for measurement and payment for work performed under each section of the technical specifications. The measurement for payment for each item shall be coordinated with other referenced specification standards, such as CDOT specifications. The

Consultant's drawings and specifications regarding measurement for payment shall be coordinated with Thornton standards for certain measurement and payment methods contained in Thornton's Special Conditions. The Consultant shall at a minimum coordinate the following sections:

1. Demolition, Excavation;
2. Muck excavation;
3. Fill;
4. Subgrade preparation,
5. Asphalt and/or concrete paving;
6. Temporary and permanent asphalt patching,; and
7. Potholing.

The Consultant shall read and be familiar with Thornton's standard construction contract language regarding the Schedule of Contract Items and Prices and Special and General Conditions regarding measurement and payment. The Consultant and Thornton shall determine which pay items shall be paid at the Plan Quantity and which pay items shall have an estimated quantity designated as possibly varying more than plus or minus 25% from the stated quantity.

- R. The Consultant shall attend a minimum of two (2) Progress Meetings on-site or city meeting room with Thornton's staff to exchange and share information during preparation of the preliminary documents. Project progress updates shall be provided to the city on a weekly basis.
- S. The Consultant shall comply with the International Building Code (IBC), Mile High Flood District (MHFD), American National Standards Institute, Inc. (ANSI), American Association of State Highway Transportation Officials (AASHTO) and all other nationally adopted design standards, as well as other standards adopted by Thornton, in designing each element of the Project.
- T. The Consultant shall prepare an updated Estimate of Probable Construction Cost for the Project. The estimate shall be based on a work breakdown structure describing finite elements of the work and unit prices applicable to each element. The work breakdown structure shall include separate line items for mobilization, traffic control, SWMP maintenance, testing and project close-out. Thornton requires that a construction contingency allowance of at least ten percent (10%) of the Project construction budget be reserved and carried as a separate line item in all cost estimates. For projects that are to use the unit price method of measurement and payment, the Consultant shall prepare

measurement and payment specifications for each item proposed. Should the updated cost estimate exceed the currently approved budget, Consultant shall prepare a list of possible design alternates or revisions to bring the design back within budget. Thornton will either approve the inclusion of the alternates or revisions and/or amend the budget prior to commencing with the next phase of design.

- U. The Consultant shall prepare and submit information to be incorporated with Thornton's standard construction contract documents including, at a minimum, the following:
1. A brief description (one paragraph) of the Project that adequately depicts the work to be completed, which will be used in the Invitation for Bids of Thornton's standard contract documents.
 2. An estimate of the number of consecutive Calendar Days that will be required for completion of construction of the Project, which will be included in Thornton's standard construction contract documents. The estimate shall take into account average weather conditions for the time of the year in which construction is anticipated to take place, as well as any other limitations on the work by the contractor, such as planting and establishment windows, seasonal water flows and school schedules. The estimate shall consider any intermediate milestones and construction phasing that may be necessary to complete the construction.
 3. A summary of recommended modifications to the Special Conditions section of Thornton's standard construction contract documents. The Special Conditions are used to modify the standard General Conditions to fit the specifics of each project. The General Conditions will not be edited. The summary shall include, at a minimum, Consultant's recommendations regarding the type of schedule to be provided by the contractor (whether critical path method (CPM) or Gant), a list of other outside contractors and/or agencies the contractor will be required to coordinate with, any special insurance requirements, language for unique conditions such as assignment of pre-purchased materials or equipment to the general contractor, a calculation for recommended liquidated damages to be imposed if the general contractor should fail to substantially complete the Project within the specified contract time, bid item descriptions including measurement and payment information and an estimate of the time required for the review of shop drawings and submittals.
 4. A "Schedule of Contract Items and Prices" using Thornton's standard format. This schedule shall contain blank areas where the bidder will fill in the amount of their bid for each recommended item. A separate mobilization, traffic control, SWMP maintenance and close out line item is

mandatory for all bid schedules. Do not include the project contingency line from the estimate in the Schedule of Contract Items and Prices. Unless otherwise directed by Thornton, for building projects the schedule shall include a lump sum price for the base bid, and separate lump sum prices for any additive or deductive alternates that are included in the Project.

- V. The Consultant shall complete the Preliminary Design Phase of work and deliver one electronic file set of preliminary drawings, specifications and Estimate of Probable Construction Cost within ninety (90) Calendar Days following the Notice to Proceed. Thornton will require a minimum of ten (10) Calendar Days to review the submitted information. The Consultant shall attend a Field Inspection Review (FIR) Meeting and record comments of all interested parties. The Consultant shall be responsible for documenting all decisions reached during the meeting and preparing and submitting the meeting minutes to all attendees.

III. Final Design Phase

- A. Based on comments received at the FIR Meeting, the Consultant shall prepare pre-final and final drawings and specifications in Thornton's required format.
- B. The Consultant shall attend a minimum of one (1) Progress Meeting on-site or in city meeting room during the Final Design Phase to discuss previously undiscovered conditions or concerns arising during final design.
- C. During the Final Design Phase and when Thornton and the Consultant believe the documents are sufficiently complete, the Consultant shall submit design documents to Thornton's Building Department and the SWMP plan to the Infrastructure Department for review. Consultant shall respond to review comments and shall make revisions as necessary to obtain approval for the design. These revisions shall be coordinated with Thornton's project representative(s) and all Sub consultants to assure all documents are coordinated among all design disciplines, to assure the revisions do not negatively impact efficient functioning of the Project, and to assure code compliance is achieved.
- D. The Consultant shall identify and utilize an individual or individuals to perform an independent quality control check of the drawings and specifications to assure the documents are clear and complete and to assure functional coordination of the varied systems and components of the construction documents. This individual shall not have had a role in the development of the construction documents. The quality control check shall include checking dimensions, sizes, detail, section and elevation references, coordination between the Consultant and Sub consultants' drawings, compatibility of materials, references within technical specifications to other sections and to drawings, and constructability. Consultant shall submit the comments from the

independent quality control check to Thornton. Thornton may engage independent consultants to perform a separate peer review. Consultant shall supply all necessary calculations, analyses and other documents and cooperate fully with any such independent peer review.

- E. The Consultant shall obtain and prepare the application for a National Pollutant Discharge Elimination System (NPDES) permit.
- F. The Consultant shall prepare an updated Estimate of Probable Construction Cost just prior to submitting the pre-final documents (approximately ninety-five percent (95%) complete design). The estimate shall be based on a work breakdown structure describing finite elements of the work and estimated unit prices applicable to each element. The work breakdown structure shall include items for mobilization, traffic control, SWMP maintenance and project close-out. Thornton requires that a construction contingency allowance of at least ten percent (10%) of the Project construction budget be reserved and carried as a separate line item in all cost estimates. Should the pre-final Estimate of Probable Costs exceed Thornton's currently approved budget, the Consultant shall be required to revise the design to come within Thornton's budget at no cost to Thornton. Thornton may engage the services of an independent third party to provide assistance in cost estimating and to verify the Consultant's estimate. Thornton may request that the independent third party estimator assist with development of design alternatives if required to bring the project back within budget. Should Thornton engage the services of a third party cost estimator, the Consultant shall cooperate with and participate in the independent third party cost estimating and design alternatives evaluation. The Consultant shall make changes to the design documents at no cost to Thornton resulting from this effort.
- G. The Consultant shall complete the pre-final design documents (approximately ninety-five percent (95%) design completion) and submit five (5) half size and one (1) full size hard copy sets plus one (1) electronic file set of all documents including pre-final drawings, specifications and revised pre-final Estimate of Probable Construction within sixty (60) Calendar Days following the FIR Meeting. Thornton will require a minimum of ten (10) Calendar Days to review the documents. The Consultant shall attend a Final Office Review (FOR) Meeting to receive comments on the pre-final documents from all interested parties. The Consultant shall be responsible for documenting all comments and decisions reached during the meeting and preparing and submitting the minutes of the meeting.
- H. The Consultant's pre-final and final contract documents shall provide drawing sheets which shall include, but not be limited to, the following:
 - 1. Title sheet or sheets with Thornton's approval signature block, a location map, the Project name, address and Capital Improvement Project number, issue block with dates and revision numbers, summary of

applicable codes and standards, Drawing Index, sheet number block, space for professional stamp, name, street address, phone, fax and email address of Consultant and all Sub consultants.

2. Table of "Estimated Quantities", with notation of items which will be paid at Plan Quantity and items which may vary by more than plus or minus 25% or estimate.
3. Dimensioned construction drawings for all required disciplines which may include, but not necessarily be limited to, ROW plans, demolition plans, staging plans, traffic control, erosion control, drainage, roads, trails, utilities, grading, paving, landscape, irrigation, site furnishings, site and street lighting, site signage, architectural and structural plans, sections, elevations, mechanical, electrical, plumbing, fire detection, voice/data communications, cabling, interior signage, finishes, hardware schedule, with notes, profiles, sections, elevations, schedules, proposed submittal form and details as required to detail the work sufficiently to allow for the complete construction of the Project. Include final LF of new trails and SF of hardscape gathering areas, sod, planting beds, mulch, play area surfacing, numbers of new light fixtures, site furniture and any other amenities needing catalogued.
 - I. The Consultant shall comply with the IBC, ANSII, AASHTO, ADA and all other nationally adopted design standards, as well as other standards adopted by Thornton, in designing each element of the Project.
 - J. The Consultant shall make document revisions noted and agreed upon at the FOR Meeting within ten (10) Calendar Days following the FOR Meeting. Revisions may include denoting work elements as bid alternatives and revising the bidding form and alternates specification section if, in Thornton's sole opinion, the cost estimates are not consistent with the budgeted level of funding and the design alternatives accepted have not sufficiently reduced the cost estimate to align with the budget. If, in Thornton's sole opinion, the final documents submitted by the Consultant do not adequately respond to the FOR comments, the Consultant shall revise and reissue the final documents at no additional cost to Thornton until all comments are resolved to Thornton's satisfaction.
 - K. When Thornton determines that the final contract documents are acceptable by staff and the Building and Infrastructure Departments, and are ready for bidding, the Consultant shall submit the following to Thornton:
 1. Technical Specifications: Submit technical specifications in Microsoft Word, either emailed to Contract Administrator or on a CD, prepared using the following format:
 - i. 8 ½" x 11", 11.5 pt. Arial font, single sided,

- ii. Margins: left 1.0", right 1.0", top 1.0", bottom 1.0"; footer 0.5", no headers,
 - iii. Index/Table of Content of Technical Specs with no page numbers indicated,
 - iv. Project Summary of work included,
 - v. Overall List of Submittals,
 - vi. No section breaks, use page breaks between spec sections,
 - vii. Section titles in all caps, bold, 14 pt. Arial, centered on page at top of each new spec section,
 - viii. Entire set of specification pages numbered sequentially beginning with Page 1 of x, including Section number & title,
 - ix. Footer with Project name and Section title left justified and page number centered, 8pt. font.
2. Permit documents: After Thornton incorporates the technical specifications into the Project Manual, obtain the electronic document from Thornton and wet stamped with specifications and drawings of the architect and engineer of record, for submission for permit. Issue block on these drawings and on cover page of Project Manual shall say "Issued for Permit" and indicate date.
 3. Bid documents: Thornton will prepare the Project Manual for bidding. The Project Manual for bidding will not be stamped by the Consultant. The cover page on the Project Manual shall say "Issued for Bidding" with date.

Consultant shall submit electronic files of drawings on CD. Submit one disk with drawing file(s) in AutoCAD format compatible with Thornton's system. Submit another disk with drawings combined into a single file using .pdf format. Alternatively, the .pdf version may be emailed to the Contract Administrator provided the file size is small enough to email successfully.

- L. Consultant shall submit a final Estimate of Probable Construction Cost. Thornton requires that ten percent (10%) of the engineer's estimate be available in the overall budget for a construction contingency at the time of bidding to cover unforeseen changes during the construction of the Project.

IV. Bid Phase

- A. The Consultant shall attend the "Pre-bid Conference" and shall provide assistance to Thornton in responding to inquiries by the prospective bidders during the bidding period. Bidding is anticipated to occur in spring 2024. The city has elected to pre-qualify contractors. The Consultant shall work with the contractors selected to clarify all items to develop a final bid price.

- B. The Consultant shall prepare all necessary corrections and additional information based on prospective bidder inquiries. All answers to questions shall be coordinated with Thornton and issued by Thornton. Consultant shall not respond directly to any prospective bidder or subcontractor during the bid phase. Consultant shall assist Thornton with preparation of addenda. Thornton will issue all addenda.
- C. The Consultant shall assist Thornton in the review of bids received as deemed appropriate by Thornton.
- D. If more than one hundred eighty (180) Calendar days have elapsed between the date of the Consultant's most recent estimate of probable construction cost and the date of the bid submission, the estimate of probable construction cost total shall be adjusted for inflation based on the Engineering News Record Construction Cost Index for Denver. The adjusted estimate shall be used as the basis for evaluating the bids and the Project budget.
- E. Should the bid of the lowest responsive and responsible bidder exceed the Consultant's estimate of probable construction cost, Thornton and the Consultant shall explore options, including but not limited to awarding the project as designed if sufficient budget contingency is available, evaluating design alternatives and estimates of related cost savings to bring the Project back within budget, and re-designing and rebidding. Thornton, at its sole discretion, will determine which course of action to take.
- F. If the bid exceeded the Consultant's estimate of probable construction cost, as adjusted for inflation if applicable, and should Thornton choose to re-design and re-bid the Project, the Consultant shall prepare revised contract documents as required and shall assist in the re-bidding phase. If Thornton should choose to award the Project without rebidding, the Consultant shall cooperate with the selected contractor and assist in preparation of "Proposal Requests" as directed by Thornton to reduce the Project cost to within budget, all at no additional cost to Thornton.
- G. At the end of the Bid Phase, the Consultant shall make final revisions to the contract documents based on addenda issued during the Bid Phase. Drawing revisions shall be indicated by encircling addenda changes with "clouds" and including a delta indicating the addendum number. All addenda dates and delta numbers shall also be indicated in the revision block on each sheet. Project Manual addenda revisions shall be denoted by striking through deleted text and italicizing added text with the addendum number noted in parentheses immediately following each text revision. The Project Manual index shall indicate those sections that contain addenda revisions by placing an asterisk next to the section number in the Index/Table of Contents. The Consultant shall provide revised electronic documents to Thornton within fourteen (14) Calendar Days following the opening of the bids. Issue block shall say "For Construction" and shall be dated as of the general contractor's

date of Notice of Award. Thornton will issue the "For Construction" documents to the successful general contractor for use during the construction phase. Consultant shall be responsible for the cost of printing and distributing hard copies of the "For Construction" documents to themselves and their Sub consultants.

V. Construction Phase

- A. Construction is anticipated to commence approximately three (3) months following the delivery of the bid-ready set of documents. The Consultant shall attend the "Pre-Construction Meeting" and provide assistance to Thornton in responding to inquiries by the contractor during the Pre-Construction Meeting.
- B. The Consultant and their Sub consultants shall provide periodic field observation at least on a weekly basis to assure themselves and Thornton that the work is proceeding in accordance with the intent of the contract documents. The Consultant shall submit a report to Thornton and the contractor for all field observations performed. Notwithstanding the foregoing, if required by any permitting agency or Thornton, the Consultant's Engineer shall be required to inspect structural work, including but not limited to any foundations and steel structures, and provide a letter to the permitting agency and Thornton certifying that the work was constructed substantially in accordance with the design intent (Letter of Construction Compliance). The Consultant's Engineer shall be available within 24 hours of notification to visit site to perform structural observations and provide approvals prior to pouring of concrete. A minimum of ten (10) Engineer representative site visits or twenty (20) hours shall be incorporated into the costs for this phase of work. The Consultant Engineer shall provide a separate hourly cost for each additional site visit required beyond the minimum.
- C. The Consultant shall attend weekly meetings on-site with the contractor and Thornton and address any questions regarding design as they arise.
- D. The Consultant shall review the contractor's proposed submittal schedule and comment on submittal review times proposed. The Consultant and contractor shall negotiate until mutually acceptable review times are established for each submittal. The Consultant shall complete submittal review within the agreed upon allotted time so as to not delay the construction. A maximum of seven (7) calendar days shall be allotted for each submittal review.
- E. The Consultant shall promptly respond to requests for information issued by Thornton, the contractor, subcontractors, testing agencies, commissioning agent, Building or Infrastructure Department or other entities so as not to delay construction.
- F. The Consultant shall issue "Supplemental Instructions" to Thornton or their designated representative when an ambiguous condition requiring clarification

is discovered in the contract documents. The Consultant shall prepare documents providing clarification and/or correcting errors or omissions in the contract documents at no charge to Thornton. Consultant shall prepare a Proposal Request for issuance to the contractor when such items may have a cost or schedule impact.

- G. The Consultant shall periodically update the electronic documents to reflect as-built information throughout the construction phase, as a minimum at the completion of each trades work, to keep the electronic documents current. The as-built information shall be confirmed with the contractor and Thornton's Construction Coordinator before the revisions are finalized.
- H. The Consultant shall provide change order consultation as it relates to change order requests submitted by the contractor, including but not limited to review of change order requests for impacts on schedule, quality, constructability, aesthetics, functionality and proposed change order pricing. Change order consultation may also be necessary for discretionary changes requested by Thornton; however, such consultation is not included in the not-to-exceed fee for this Agreement. Compensation for discretionary change order consultation shall be made on a time and expense basis at the rates specified in the Schedule of Charges included in the Professional Service Agreement.
- I. The Consultant shall prepare an as-built pond survey if any field changes occurred to the pond grading and incorporate it into the as-built documents.

VI. Closeout Phase

- A. When the contractor applies for "Substantial Completion", the Consultant, in consultation with Thornton's representative(s), shall perform a walk-through of the Project to review and add to the contractor's punch list. The Consultant shall monitor the contractor's progress on the punch list and recommend to Thornton when all items are satisfactorily completed, and "Initial Acceptance" may be granted.
- B. Within twenty (20) Calendar Days after Initial Acceptance of the Project, the Consultant will be required to submit the following:
 - 1. Preliminary Design Documents and review comments in Microsoft Word on a non-rewritable compact disc (CD-ROM).
 - 2. FIR review comments in Microsoft Word on a non-rewritable compact disc (CD-ROM).
 - 3. FOR review comments in Microsoft Word on a non-rewritable compact disc (CD-ROM).

4. Public Meeting Minutes in Microsoft Word on a non-rewritable compact disc (CD-ROM).
5. The Consultant shall prepare and submit as-built documents. The issue block on the drawings shall say “As-Built” and indicate the date which shall be the date of Initial Acceptance. The as-built Project Manual shall indicate “As-Built” and the Initial Acceptance date on the cover page.
 - i. As-built electronic drawing files shall be in a vector format compatible with the AutoCAD version currently in use by Thornton. Provide both .dwg and .pdf formats on CD.
 - ii. The Project Manual shall be submitted as electronic files on CD. Submit electronic files in a Microsoft Word file compatible with the version currently in use by Thornton and as a .pdf file.

VII. Warranty Phase

- A. The Consultant shall assist Thornton in resolving warranty repairs during the warranty period.
- B. The Consultant shall participate in a walk-through of the Project near the end of the Warranty Phase and prepare a final punch list of items needing correction. The Consultant shall review progress made by the contractor on the Warranty Phase punch list and recommend when the Work is completed satisfactorily, and the Project is ready for Final Acceptance.

Project Schedule

All deliverables, meetings, and review times shall be as follows:

- Notice to Proceed – Date to be determined. Target date is January 2024

Preliminary Design Phase – One Hundred (100) Calendar Days

- Attend Project Kick-Off Meeting – date to be determined.
- Attend Data Gathering Meetings – dates to be determined.
- Attend field conditions walk-through – date to be determined.
- Attend Public Meeting (1) – date to be determined
- Attend Progress Meetings – dates to be determined.
- Submit Schematic Design Concepts with costs for review – date to be determined
- Submit Preliminary Design documents within ninety (90) Calendar Days after Notice to Proceed.
- Attend Field Inspection Review (FIR) Meeting within ten (10) Calendar Days from Preliminary Design document submittal.

Final Design Phase – One Hundred Forty (140) Calendar Days

- Attend Progress Meetings on-site – dates to be determined.

- Attend Public Meeting (or City Council or Parks and Open Space Advisory Commission Meeting) (1) – date to be determined.
- Submit pre-final design documents within sixty (60) Calendar Days from FIR Meeting or two hundred twenty (220) Calendar Days after Notice to Proceed.
- Attend Final Office Review (FOR) Meeting within ten (10) Calendar Days after submittal of pre-final design documents.
- Submit Final Design bid documents within ten (10) Calendar Days after Final Office Review (FOR) Meeting.

Total design duration equals one hundred eighty (180) days.

Bid Phase

- Attend Pre-Bid Conference with contractors – date to be determined.
- Revise documents (if necessary) as required to meet budget – submission date to be determined.
- Prepare addenda for Thornton’s review – dates to be determined.
- Prepare “For Construction” contract documents incorporating all addenda items – deadline to be determined and to correspond to date of Notice of Award for the construction contractor.

Construction Phase

- Attend Pre-Construction Meeting with awarded contractor – date to be determined and should correspond to date of Notice to Proceed for the construction contractor.
- Perform periodic field observations weekly – dates to be determined.
- Perform necessary structural observations for conformance to drawings – dates to be determined.
- Attend weekly Construction meetings on-site – dates to be determined.
- Review submittals, change orders and construction compliance as required – dates to be determined.

Closeout Phase

- Attend irrigation audit and punch list walk-through – date to be determined.
- Monitor punch list progress – dates to be determined.
- Review contractor submitted closeout documents – date to be determined.
- Recommend issuance of Initial Acceptance – date to be determined.
- Submit as-built documents – within twenty (20) Calendar Days following issuance of Initial Acceptance to construction contractor.

Warranty Phase

- Assist Thornton with obtaining warranty repairs as needed – dates to be determined.
- Attend Final Acceptance warranty punch list walk-through – date to be determined.

EXHIBIT B

DRAW-DOWN REQUEST

r

City of Thornton, Colorado	
Community Development Block Grant Program	
Agency Name:	Program Year: 2021
Address:	Drawdown Number: 1
Phone Number:	Reporting Period:
Contact Person:	Activity Name: McAllister Park Design

DESCRIPTION	
Line 1: Original Activity Budget	\$70,030.30
Line 2: Net Budget Amendments for Program Year	\$0.00
Amendment #1	\$0.00
Amendment #2	\$0.00
Line 3: Revised Budget (Line 1 + Line 2)	\$70,030.30
Line 4: Total Previous Draws to Date	\$0.00
Line 5: Available Draw Down Amount (Line 3 - Line 4)	\$70,030.30
Line 6: Total Amount of Expenditures Eligible for Reimbursement	\$0.00
Line 7: Total Program Income Received	\$0.00
Line 8: Current Draw Down Request (Line 6 - Line 7)	\$0.00
Line 9: Total Expenditures to Date After Draw Down (Line 4 + Line 8)	\$0.00
Line 10: Remaining Balance (Line 3 - Line 9)	\$70,030.30

I hereby certify that, to the best of my knowledge, this request for payment represents a true and correct statement of the work performed and costs incurred and is necessary and reasonable in conformance with the contract terms.

Contractor/Contractor Signature

Contractor/Contractor Title

Date

To be Completed by CDBG Staff

IDIS Project # _____	JD Edwards Acct # _____
IDIS Activity # _____	Purchase Order # _____
IDIS Activity Name _____	Contract # _____
If first draw, Environmental Review completed _____	Outcome Perf. Report Submitted _____
Is Davis Bacon applicable? _____	Approval for Davis Bacon _____
Final DRAW-IDIS approval _____	Rescind Balance _____
Contractual Relationship: Contractor Contractor	
I have reviewed the documentation and find it adequate to support payment, per OMB Super Circular (2 CFR 200) as applicable.	
CDBG Staff signature & date: _____	
Supervisor/Manager Signature & date : _____	
Notes:	

VIII. EXHIBIT 3

REFERENCE AUTHORIZATION AND RELEASE FORM

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

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

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EXHIBIT 4

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

Table of Contents

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Labor Standards – Davis-Bacon and Related Acts
- V. Training and Employment Opportunities for Residents in the Project Area
(Section 3, HUD Act of 1968; 24 CFR 135)
- VI. Implementation of Clean Air Act and Federal Water Pollution Control Act
- VII. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary
Exclusion
- VIII. Certification Regarding Use of Contract Funds for Lobbying
- IX. Procurement of Recovered Materials
- X. Health and Safety
- XI. Prohibition On Certain Telecommunications And Video Surveillance Services Or
Equipment (2 Cfr 200.216)
- XII. Domestic Preferences For Procurements (2 Cfr 200.322)

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I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12.
Section I, paragraph 2;
Section IV, paragraphs (a),(c), (d), (e) and (j)(1);
Disputes arising out of the labor standards provisions of Section IV of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
5. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal and Federally Assisted construction contracts and to all related subcontracts of \$10,000 or more.)

EQUAL EMPLOYMENT OPPORTUNITY

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

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to: a. employment, b. upgrading, c. demotion, d. transfer, e. recruitment or recruitment advertising, f. layoff or termination, g. rates of pay or other forms of compensation, and h. selection for training, including apprenticeship.
3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
5. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
7. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
8. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and

remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

9. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

10. Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

CDBG Conflict of Interest Policy

1. No person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of Contractors that are receiving funds or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of the above paragraph on a case-by-case basis. Consistent with 24 CFR Part 570.61, HUD will consider an exception only after the County as provided the following documentation:
 - (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (ii) An opinion of the county attorney that the interest for which the exception is sought would not violate State or local law.

III. NON-SEGREGATED FACILITIES

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

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. LABOR STANDARDS-DAVIS-BACON AND RELATED ACTS

Applicable to CDBG funded construction contracts (29 CFR 5) exceeding \$2,000 and to all related subcontracts, except for rehabilitation of residential property only if such property contains more than 8 units (24 CFR 570.603).

1. Minimum Wages.

- a. All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)),

the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv) and 29 CFR Subpart B "Interpretation of the Fringe Benefit Provisions of the Davis-Bacon Act"; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except if such laborers meet the criteria for an apprentice or trainee, as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (B) The classification is utilized in the area by the construction industry; and
 - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by

HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1.b.(ii). (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- 2. Withholding of funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of

failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls and basic records.

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years from the date of completion of the contract for all laborers and mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

The payroll records shall contain the name, address, and employee identification number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (i) The Contractor shall submit weekly for each week in which any contract work is performed the contractor and all subcontractors original payrolls and Statements of Compliance to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph 3. a. of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be downloaded at the hyperlink provided in the Incorporated References section of this document. The Contractor is responsible for the submission of payrolls by all

subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph 3. a. of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (D) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph 3.b.(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

- c. The Contractor or subcontractor shall make the records required under subparagraph 3.a. available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices.

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- b. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted

under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
6. **Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
7. **Compliance with Davis-Bacon and related Act requirements.** All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
8. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the City of Thornton, HUD, the U.S. Department of Labor, or the employees or their representatives.

9. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph 9.a. of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph 9.a. of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph 9.a. of this clause.
- c. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph 9.b. of this clause.

10. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

V. TRAINING AND EMPLOYMENT OPPORTUNITIES FOR RESIDENTS IN THE PROJECT AREA (Section 3, HUD Act of 1968; 24 CFR 135)

1. The contractor will go through the process to determine if they qualify as a Section 3 Business concern, by determining if they meet any of the following criteria. The contractor cannot assume that they either meet or do not meet any of the criteria for qualifying as a Section 3 Business Concern. The contractor must have documentation to support its claim for either meeting or not meeting the criteria for qualifying as a Section 3 Business Concern.
 - a. The contractor will be sub-contracting at least 25% of the total value of the contract to a Section 3 Business Concern(s). If the contractor does meet this criterion, they must provide proof that the sub-contractor(s) meets the criteria for being a Section 3 Business Concern. If the contractor does not meet this criterion, they must proceed to 6.b. to determine if they meet that criterion.
 - b. Fifty-one percent (51%) or more of the owners of the company qualify as Section 3 residents. This must be determined by providing each of the owners with a self-certification form that will be provided by the City or through another similar means which must be approved by the City. Documentation of the contractor's efforts, including but not limited to copies of the certifications, must be provided to the City. If the contractor does not meet this criterion, they must proceed to 6.c. to determine if they meet that criterion.
 - c. Thirty percent (30%) or more of the full-time permanent employees of the company qualify as Section 3 residents. This must be determined by providing each of the full-time permanent employees with a self-certification form that will be provided by the City or through another similar means, which must be approved by the City. Documentation of the contractor's efforts, including but not limited to copies of the certifications, must be provided to the City.
2. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

VI. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, and EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

VII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION.

Thornton and the Contractor shall not directly or indirectly use funds to employ, award contracts to, or otherwise engage the services of, or fund any contractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of Executive Order 12549 and 2 CFR 200.212, 24 CFR 570.609 and 2 CFR 180.220 and 2 CFR 2424. Before any funds can be paid from this Contract, the Contractor shall submit written evidence that they are currently enrolled in the System for Award Management (SAM) and are not currently debarred, suspended or otherwise ineligible and have determined that all of the subcontractors, and service providers who will benefit from this Contract, are currently enrolled in the SAM and are not currently debarred, suspended or otherwise ineligible.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 24 CFR 570.609)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the System of Award Management (SAM).
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three (3)-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

- d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

VIII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federally-assisted construction contracts and to all related subcontracts which exceed \$100,000 – 2 CFR 200.450 and 2 CFR Appendix II (I))

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

IX. PROCUREMENT OF RECOVERED MATERIALS

1. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items:
 - a. are not reasonably available in a reasonable period of time;
 - b. fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or
 - c. are only available at an unreasonable price.
2. Paragraph 1 of this clause shall apply to items purchased under this contract where:
 - a. the Contractor purchases in excess of \$10,000 of the item under this contract; or
 - b. during the preceding Federal fiscal year, the Contractor:
 - (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and
 - (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

X. HEALTH AND SAFETY. The provisions of this paragraph are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

XI. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR 200.216)

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;

- (2) Extend or renew a contract to procure or obtain; or

- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal

Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- b. In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

XII. DOMESTIC PREFERENCES FOR PROCUREMENTS (2 CFR 200.322)

- a. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- b. For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- c. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

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EXHIBIT 5

INCORPORATED REFERENCES

Below is a list of the location of references incorporated into this document.

CFR (Code of Federal Regulations) - <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

CRS (Colorado Revised Statute) - <http://www.colorado.gov/cs/Satellite/CDLE-UnempBenefits/CDLE/1251566393694>

Davis Bacon Prevailing Wage Requirements for Federally-Assisted Construction Projects - <http://portal.hud.gov/hudportal/documents/huddoc?id=4812-LRguide.pdf>

Davis Bacon Prevailing Wage Determination - <http://www.wdol.gov/sca.aspx>

Davis Bacon "Notice to All Employees Working on Federal or Federally Financed Construction Projects" Poster - <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
<http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>

Debarred or Suspended Contractor List - <https://www.sam.gov/portal/public/SAM/>

Drug Free Workplace Act - <http://www.dol.gov/elaws/asp/drugfree/screenr.htm>

EO (Executive Order) - <http://www.archives.gov/federal-register/codification/numeric.html>

Federal Labor Standards Provisions (HUD 4010) - http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf

HUD Income Limits - <http://www.huduser.org/portal/datasets/il.html>

Labor Relations Letter 2006-02 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_lrl

OMB Circular - http://www.whitehouse.gov/omb/circulars_default/

Payroll WH 347 Form - <http://www.dol.gov/whd/forms/wh347.pdf>

USC (United States Code) - <http://uscode.house.gov/search/criteria.shtml>


Certificate Of Completion

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Subject: Please sign the attached: 24-543 - McAllister Park RFP	
Source Envelope:	
Document Pages: 95	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Andrew Villarreal
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Contracts Administration SSContractsandPurchasing@thorntonco.gov Security Level: Email, Account Authentication (None)	COPIED	<p>Sent: 12/11/2023 10:53:12 AM Viewed: 12/11/2023 11:50:19 AM</p>

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Witness Events

Witness Events	Signature	Timestamp

Notary Events

Notary Events	Signature	Timestamp

Envelope Summary Events

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/11/2023 10:18:34 AM
Certified Delivered	Security Checked	12/11/2023 10:52:58 AM
Signing Complete	Security Checked	12/11/2023 10:53:09 AM
Completed	Security Checked	12/11/2023 10:53:12 AM

Payment Events

Payment Events	Status	Timestamps

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