

**CITY OF THORNTON**

**REQUEST FOR PROPOSALS**

**FOR**

**DESIGN – BUILD SERVICES**

**CDBG LOMA LINDA PARK REHABILITATION**

**PROJECT NO. 24-46**

**January 2024**

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### III. NOTICE REQUEST FOR PROPOSALS

The City of Thornton, CO (“Thornton”) respectfully requests separate sealed Proposals for Design-Build Playground Construction Services for **CDBG Loma Linda Park Rehabilitation, Project No. 24-46** (hereinafter referred to as “Project”). Proposals will be received until **3:00 p.m.**, local time, **February 23, 2024**, in the Contract Administration Office, 9500 Civic Center Drive, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326.

Approved Methods for Submission of Proposals:

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

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

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

Late Proposals will not be accepted under any circumstances.

#### Project Description:

This Project consist of professional services from playground vendors/installers for the design and construction to replace play equipment with new features that maximize the play value of the existing small playground footprint and give the playground a unique visual style and hard-cover shaded picnic seating.

Services requested include:

- Demolition and disposal of existing play equipment, EWF surface. Picnic tables to be removed by City.
- Design, procure, and install updated play equipment and hard-cover shaded picnic tables.
- Design, Procure and install new EWF surfacing.
- Design, Procure and install other new features as may be included in respondents proposal.
- Demolition and replacement of concrete sidewalk segments around play area.
- Painting of two bike racks, straightening 3 light posts, and replacing bollards with squared boulders.

**City of Thornton is seeking proposals from playground vendors/installers for design and construction work to be performed for/at Loma Linda Park. Proposed Scope of work shall be for the best facility improvements and most value to achieve a park commensurate with a stipulated sum of three hundred thousand dollars (\$300,000.00) and amount should be used to guide proposals. Vender/installers shall submit their best option park concept for the Loma Linda Park for the stipulated sum indicated above that also can be completed within the strict schedule requirements indicated herein.**

The Project is funded by a U.S Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) administrated by the City of Thornton. The most

current Davis-Bacon Wages shall be paid to all construction, alteration or rehabilitation, laborers and mechanics employed by the Contractor on this Project.

In the event, Thornton City Council in cooperation with HUD, fails to appropriate funds for the execution of this Agreement to initially award, Thornton may, elect to forgo award and cancel the solicitation.

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

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

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

A Mandatory Pre-Proposal Conference to discuss the Project(s) will be held at **9:00 a.m., February 7, 2024** in the **City Hall Training Room (1<sup>st</sup> floor)** at the aforementioned address. 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, CDBG Loma Linda Park Rehabilitation, Project No. 24-46”**. 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, CDBG Loma Linda Park Rehabilitation, Project No. 24-46”**.


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

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

First Advertisement: February 1, 2024, Northglenn-Thornton Sentinel

Second Advertisement: February 8, 2024, Northglenn-Thornton Sentinel

BY:   
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Dennis Laurita  
Contracts Supervisor

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## IV. PROPOSAL INSTRUCTIONS AND INFORMATION

Thornton is soliciting written Proposals from qualified firms for Design-Build Playground Construction Services for **CDBG Loma Linda Park Rehabilitation, Project No. 24-46**. 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: Keith Griess, Sr. Contracts Administrator  
9500 Civic Center Drive  
Thornton, CO 80229-4326  
Fax: 303-538-7556 or  
E-mail: [keith.griess@ThorntonCo.gov](mailto:keith.griess@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 (10<sup>th</sup>) Calendar Day prior to the date established for the submission of the Proposal. It shall be the responsibility of each proposing firm to verify that every addendum has been received prior to submitting a Proposal.

### B. SUBMITTAL DATE AND LOCATION

All Proposals must be received in the Contracts and Purchasing office located at Thornton City Hall, City of Thornton, 9500 Civic Center Drive, 2<sup>nd</sup> Floor City Hall, Thornton, CO 80229-4326 or submitted via the BidnetDirect.com vendor portal **prior to 3:00 p.m. local time on February 23, 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, CDBG Loma Linda Park Rehabilitation, Project No. 24-46**", 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, CDBG Loma Linda Park Rehabilitation, Project No. 24-46**", on the outside of the mailing envelope or box.

**C. LATE AND ELECTRONIC PROPOSALS**

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

**D. CONFIDENTIAL AND PROPRIETARY INFORMATION**

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

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

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

**F. CONDITIONS OF PROPOSAL SUBMITTAL**

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

4. Only one (1) Proposal will be accepted from any person or corporation. If multiple options are requested or offered, each option must be submitted under a single Proposal and in a single envelope or box.
5. All terms and prices quoted must be firm for a period of sixty (60) Calendar Days from the Proposal submittal date or until Award, whichever is sooner.
6. Thornton reserves the right to reject any and all Proposals, or any part thereof. Thornton further reserves the right to waive any formalities, or informalities contained in any Proposal, and to award the Agreement to the most responsive, responsible, and trustworthy proposing firm as deemed in the best interest of Thornton.
7. All Proposals shall be prepared in a comprehensive manner as to content, but no necessity exists for expensive binders or promotional materials.
8. All costs, including travel and expenses incurred in the preparation of the Proposal, shall be borne solely by the proposing firm.
9. Section 7.4 of the Thornton City Charter prohibits Thornton from entering into any contracts involving an amount in excess of one hundred dollars (\$100) in which an elective or appointive officer or any member of the officer's family has any pecuniary interest, direct or indirect, in the proposing firm or this RFP. Certain other restrictions may also apply to contracts in which an employee, member of a board or commission, City Council member or member of their family has an existing or pending financial or personal interest. For the purposes of this Charter Section, a domestic partner shall be considered a family member. Therefore, the proposing firm shall submit with the Proposal the following declaration contained in Exhibit 1, Acceptance of Conditions Statement.

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

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

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

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

## **G. EVALUATION OF PROPOSALS**

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

## **H. EVALUATION CRITERIA**

Proposals shall be evaluated on the basis of the following criteria:

1. Responsiveness to the needs of Thornton and the degree to which the Proposal meets or exceeds the requirements of the RFP, including the ability to complete all construction prior to May 31, 2024, the proposed solutions offered, the means and methods of accomplishing the Services, and the Scope of Services offered.
2. Play value of the proposed engaging equipment to utilize layout in the small space as well as support individual and small group play activity, while appealing to the intended user group.
3. Visual appeal of the park proposed to show uniqueness and attractive value to the neighborhood while providing innovative features.
4. Experience of the proposing firm in dealing with municipal or other governmental agencies in projects of similar size, scope, and nature.
5. The overall value received for the stipulated sum (as determined by the Selection Committee). Value considerations include, but are not limited to, overall park amenities, play features, landscaping, concrete repairs, visual appeal, and any other factor deemed by the Selection Committee to provide Thornton the best overall product and value for the stipulated sum.
6. The proposing firms ability to meet schedule and milestone dates identified in the Scope of Work and Project Requirements.
7. Capacity and understanding to perform in accordance with federal requirements.

**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.
6. The successful proposing firm shall procure all needed materials and equipment for the completion of the project within the specified stipulated sum and schedule.
7. The successful proposing firm shall comply with all applicable regulations associated with the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funding requirements. These include- Build America, Buy American requirements as detailed in the Infrastructure Investment and Jobs Act, Pub. L. 117-58 and 2 CFR 184. c

CDBG regulation compliance also includes labor regulations. The successful proposing firm must agree to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The successful proposing firm must agree to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

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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 stipulated project sum for both Design and Construction is three hundred thousand dollars (\$300,000.00). Proposals should include a conceptual rendering which demonstrates the proposing firm's initial concept for the park which could be designed and built within the Project budget. The project's footprint is a 0.3-acre Park including a 3,659+/- SF level play area contained by an existing concrete curb and surfaced with engineered wood fiber (EWF). Installed in 2004. Proposing firms should provide a creative and functional approach to the utilization of the available area. Proposing firms should feel free to include alternate conceptual renderings if desired.

4. A written narrative that defines the methods and means by which the proposing firm will perform the design and construction phases outlined in this RFP.
  5. A Project timeline outlining the major tasks, phases, timeframes, and milestones necessary to complete the Project (must have a completion date of May 31, 2024, or earlier). Identify the employees and subconsultants or Subcontractors that will be involved in each task.
  6. An estimate of labor resources needed by task for the design phase broken down by man-hours, including subconsultant personnel. In addition, indicate total estimated cost for each task of the design phase by multiplying the applicable billable hourly rates by the proposed labor hours, and adding in subconsultant fees, and other estimated reimbursable expenses. This estimate shall be the basis of the Not-to-Exceed value for the Design phase. Proposing firms shall then provide a rough estimate for the construction costs for the design proposed in the conceptual rendering. The combined values for the design and construction phase shall form the Project's total Not-to-Exceed value.
  7. A list of what portion of the Services, if any, will be subcontracted.
  8. An executed Exhibit 3, Reference Authorization and Release Form.
  9. 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 GENERAL SERVICES AGREEMENT CDBG LOMA LINDA PARK REHABILITATION PROJECT NO. 24-46

This General Services Agreement for the CDBG Loma Linda Park Rehabilitation, Project No. 24-46 ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between the City of Thornton, Adams County, State of Colorado, a Colorado Municipal Corporation ("Thornton"), located at 9500 Civic Center Drive, Thornton, CO 80229 and XXXXXXXX ("Contractor"), located at (Address). Thornton and the Contractor may be referred to herein collectively as 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

To meet the primary objective noted above, Thornton seeks to continue the CDBG Loma Linda Park Rehabilitation, Project No. 24-46 (hereinafter referred to as "Project"), funded by the Community Development Block Grant (CDBG) received from U.S. Department of Housing and Urban Development (HUD); and

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

Thornton sought and solicited vendors ("Contractor") for the letting of design build services required in connection with the Project;

Contractor is representing, to have responded and being qualified for the provisioning of the design build services Thornton needs, Thornton subsequently selected the above named Contractor to perform the work and; services to successfully complete this Project; and

City Council has approved using CDBG for this activity from the reallocated 2020,2021 and 2022 funds in the 2023 Annual Action Plan.

**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. The Contractor agrees to carry out the program services as budgeted, prescribed, and required in the following exhibits contained herein, in a lawful, satisfactory, and proper manner:
1. Exhibit A, Scope of Services/Project Requirements;
  2. Exhibit B, Proposal Pricing; and
  3. Exhibit C, Conditions.
- B. The Contractor shall perform the Services in accordance with written policies and procedures as may be prescribed by the U.S. Department of HUD or Thornton. Exhibits A, B, and C are attached hereto and incorporated herein by this reference as if fully set forth herein.

## **III. TERM OF AGREEMENT**

A. **Term: Commencement, Term and Termination Dates.**

1. This Agreement shall commence on the date as indicated above, or last signed by the Parties and terminate following Final Acceptance of the Work. If Thornton terminates the Agreement before one of the date(s) indicated above, Thornton will provide Contractor with a written notice of termination seven (7) Calendar Days in advance.
2. Notwithstanding the foregoing, if after Thornton has issued a Notice to Proceed to Contractor and the Agreement terminates, Contractor will finish any incomplete work, and the terms and conditions of this Agreement shall continue and survive after the termination date until Contractor completes the work to the reasonable satisfaction of Thornton.

B. **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.

C. **Contract Documents.** The following documents, by this reference, are incorporated, verbatim, and will hereafter be, the Agreement:

1. All executed Amendments to this Agreement;
2. Task Assignments and Purchase Orders;
3. The General Service Agreement; and
4. Exhibits:
  - a. Exhibit A Scope of Services/Project Requirements;
  - b. Exhibit B Proposal Pricing;
  - c. Exhibit C Conditions
  - d. Exhibit D Labor and Material Payment Bond;
  - e. Exhibit E Performance Bond;
5. The above named documents are essential parts of the Agreement, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe the Work. In case of discrepancy or conflict among the following documents, the order of precedence shall be as follows:
  1. Change Orders
  2. Addenda
  3. Agreement (This instrument)
  4. Conditions
  5. Appendices

#### IV. METHOD OF PAYMENT

A. **Payment:**

1. Contractor shall request reimbursement, 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 monthly.

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 Contractor's 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 B from being increased or decreased by a written amendment to this Agreement.
4. Thornton agrees to pay Contractor 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. Contractor shall be subject to the terms and conditions of said HUD Agreement and as prescribed by the approved 2023 Annual Action Plan.
5. Contractor 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 Contractor 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. Contractor 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 Contractor, at Thornton's sole discretion, when Program completion may be jeopardized due to unforeseen circumstances of Subrecipient, 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. Contractor shall comply with all federal laws, rules, and regulations prohibiting Subrecipient's recovery of duplicative benefits. Subrecipient 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. Subrecipient further acknowledges 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 Subrecipient when the Agreement expires, or received after the Agreement's expiration, shall be paid to Thornton.

## V. GENERAL CONDITIONS

- A. **Time Of Performance:** This Agreement shall begin on the Effective Date, unless such time is extended by written Amendment or Change Order executed in the same manner as this Agreement. The term of this Agreement and the provision herein shall automatically be extended to cover any additional time period during which the Contractor shall perform and remains under contract to perform Work funded by Thornton CDBG funds.

B. **Contract Amount:**

1. **Remuneration.** For the performance of all Design Services, and the completion of the Construction work for this Project, Thornton will pay Contractor a Stipulated Sum of three hundred thousand dollars (\$300,000).
2. Three hundred thousand dollars (\$300,000.00) of which has been allocated through the Annual Action Plan, as amended to be carried forward to this Agreement.
3. **Stipulated Sum Contract Price.** The Contract's Stipulated Sum Price is the Total Design Cost and Total Construction Cost established by this Agreement and at no time shall it exceed the Stipulated Sum amount except otherwise approved by a written change order or amendment executed by both Parties.
4. The obligation of Thornton for payments under this Agreement is limited to monies appropriated by Thornton under the Department of HUD, CDBG funds.
5. The Contractor authorized to undertake the Scope of Services as awarded herein shall include in all of their subcontracts the Federal Regulations as

stipulated by Thornton and HUD requirements. Funds will be released to the Contractor in accordance with Exhibit "B", the budget, and other requirements set forth in Exhibit A, Scope of Services/Project Requirements. Payments to the Contractor are also pursuant to this Agreement and is contingent upon CDBG funds being contracted to Thornton by HUD. If CDBG funds are not contracted to Thornton by HUD, this Agreement shall terminate. Thornton agrees that it will include this term in every Contract into which it enters and agrees to pay CDBG monies and, that it relies on CDBG monies for funding, Thornton includes this clause to protect itself and the Contractor 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 fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Thornton.

## **VI. ENVIRONMENTAL REVIEW PROCEDURES**

Funds 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. 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 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 the Contractor incurring costs for such activities. For projects not exempt under Section 58.34 or categorically excluded under Section 58.35, Thornton must prepare an Environmental Assessment and 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 the Contractor incurring costs for such Projects. No funds shall be distributed under this Agreement until a finding of no significant impact is established.

## **VII. RECORDS AND REPORTS**

Contractor will provide Thornton with records and reports as further detailed in Exhibit A, Scope of Services/Project Requirements.

## **VIII. NO DISCRIMINATION IN EMPLOYMENTS**

In connection with the performance of Work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.



## IX. DEFENSE AND INDEMNIFICATION

- A. Contractor 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 Work performed under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the Trier of Fact to be the sole negligence or willful misconduct of Thornton. This indemnity shall be interpreted in the broadest possible manner to indemnify Thornton for any acts or omissions of Contractor or its subcontractors, either passive or active, including Thornton’s concurrent negligence, whether active or passive, except for the sole negligence or willful misconduct of Thornton.
- B. Contractor’s duty to defend and indemnify Thornton shall arise at the time written notice of the Claim is first provided to Thornton and Thornton notified the Contractor of receipt of such Claim regardless of whether Claimant has filed suit on the Claim. Contractor’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.
- C. Contractor will 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 this 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.
- D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for Thornton’s protection.
- E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## X. CONTRACTOR INSURANCE

- A. General Insurance Requirements: Contractor 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. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, provided that such policy is an occurrence based policy; if such policy is a claims based policy then Contractor shall keep the required insurance coverage in force

for a period of three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated as A 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 natural expiration date thereof, the issuing company shall send written notice to City of Thornton, Risk Management Division, Attn: 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 must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insurance retention. Thornton reserves the right to require the Contractor to provide a bond, at no cost to Thornton, in the amount of the deductible or self-insurance retention to guarantee payment of claims. The insurance coverage specified in this Agreement is the minimum requirements, and these requirements do not lessen, or limit the liability of the Contractor. The Contractor 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.

- B. Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor hereby agrees to provide a copy of the insurance certificate and the additional insured endorsement 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 Contractor'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.
- C. Additional Insured: For Commercial General Liability and Auto Liability coverages, Contractor's insurer shall name Thornton, its officers, agents, and employees, as additional insured(s).
- D. Waiver of Subrogation: For all required coverage(s), Contractor's insurer shall waive subrogation rights against Thornton.
- E. Subconsultants: All subconsultants, subcontractors, independent contractors, suppliers, or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein, including insurance coverage as set forth in Section 7.F(2) below.

F. Worker's Compensation/Employer's Liability Insurance:

1. Contractor hereby makes the material warranties listed in subparagraphs a – c, below, on which Thornton relies in conditionally waiving the Workers' Compensation/Employer's Liability Insurance. This rejection of coverage must remain effective throughout the term of the Agreement. Further, upon the effective date of the rejection, Contractor shall provide Thornton with proof of Workers' Compensation/Employers Liability Insurance. Before commencing services in accordance with 8-41-202(1), C.R.S. based on the following warranties and upon verification of rejection in accordance with the law, Thornton conditionally waives the requirement that Contractor obtain Workers' Compensation/employers' liability insurance.
  - a. Contractor does not have any employees and will not employ any persons to perform services under the Agreement;
  - b. Contractor's sole officers are PRESIDENT and VICE PRESIDENT, with SECRETARY and TREASURER; should any other persons become an officer, such person may not perform services under this Agreement; and
  - c. In their capacity as corporate officers, each officer named in the subsection (b) above effected rejection of coverage in accordance with 8-41-202, C.R.S.
2. Subject to the conditional waiver above, Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability Insurance with limits of one hundred thousand dollars (\$100,000) for each bodily injury occurrence claim, one hundred thousand dollars (\$100,000) for each bodily injury caused by disease claim, and five hundred thousand dollars (\$500,000) aggregate for all bodily injuries caused by eligible under any statute or law to reject Workers' Compensation Insurance shall effect a rejection thereof during the term of the Agreement, and that any rejections previously effected, have been revoked as of the date Contractor executes the Agreement.

G. Commercial General Liability: Contractor shall maintain limits of two million dollars (\$2,000,000) for each occurrence claim, two million dollars (\$2,000,000) for each personal and advertising injury claim, two million dollars (\$2,000,000) products and completed operations for each occurrence, five million dollars (\$5,000,000) general aggregate, and fifty thousand (\$50,000) on any one (1) damage to rented premises.

H. Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage applicable to all owned, hired, and non-owned vehicles used in performing services under this Agreement.

I. Additional Provisions:

1. If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify Thornton within ten (10) Calendar Days and reinstate the aggregates required;
2. Unlimited defense costs in excess of policy limits;
3. Contractual liability covering the indemnification provisions of this Agreement;
4. A severability of interests' provision;
5. Waiver of exclusion for lawsuits by one insured against another;
6. A provision that coverage is primary;
7. A provision that coverage is non-contributory with other coverage or self-insurance provided by Thornton;
8. For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement or the first date when any goods or services were provided to Thornton, whichever is earlier; and
9. In the event the Contractor is unable to obtain inclusion in the policies of any such additional provision at reasonable cost, the Contractor 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 Division's sole discretion.

**XI. ACTIVITY RESPONSIBILITY AND REPRESENTATIVES NOTICE**

All applicable invoices, statements, notices, inquiries, and replies 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 the Contractor (or their successors or assigns), respectively:

THORNTON: Contract Division  
Attention: Community Connections - CDBG  
City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

CONTRACTOR: XXXXXXXXX  
Attn: XXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

**XII. GUARANTEE**

If the Project involves construction or rehabilitation, the Contractor must ensure that the General Contractors and subcontractors will guarantee the Work against defects in workmanship and materials for a period of one (1) year commencing on the date of Initial Acceptance as defined in the construction or rehabilitation Contract (the "Guarantee Period"). General Contractors shall also assign to the Contractor and Thornton any longer-term guarantee of materials used by any General Contractor and subcontractors as may be provided by the manufacturer. The General Contractor and/or subcontractors shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Guarantee Period in accordance with the Contract and without expense to the Contractor or Thornton. If General Contractors and/or subcontractors fail to proceed promptly in accordance with these guarantees, the Contractor or Thornton may have the Work performed at the expense of the General Contractor and/or subcontractor.

**XIII. INDEPENDENT CONTRACTOR**

In performing the Work, the Contractor acts as an independent Contractor responsible for calculating, withholding, and paying all federal, and state taxes and for obtaining necessary and adequate Workers' Compensation Insurance, General Liability Insurance, and any other insurance required under this Agreement. The Contractor's employees are not and shall not become employees, agents, or servants of Thornton hereunder. The Contractor's employees are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity and Thornton is obligated to pay federal and state income tax on any monies paid pursuant to this Agreement.

**XIV. COMPLIANCE WITH LOCAL AND STATE LAWS**

The Contractor specifically agrees to comply in the performance hereof with all local, state, and federal ordinances, codes, laws, rules, regulations, orders, and guidelines that are referenced herein and applicable to Terms of the Agreement and/or the Scope of Services or that may be or become applicable to the Terms of Agreement and/or the Scope of Services even though not stated herein.

In addition, performance of Work involving any physical construction or improvements shall conform to applicable building permit and inspection requirements of Thornton Building Codes jurisdiction and/or any other local applicable and related codes.

## **XV. DISPLACEMENT, RELOCATION, AND ACQUISITION**

A. The Contractor must ensure that it has taken all reasonable steps with Thornton to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms), as a result of the activities of its Project. Thornton shall provide “Notices” to be given and used by the Contractor of the actions to be undertaken and shall advise the tenants that displacement or relocation may be required on their part. If displacement should occur the Contractor must ensure that:

1. Relocation benefits shall be provided for all families whose occupied housing is demolished or converted to a use other than for low or moderate income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving related expenses, including any interim living costs; and, in the case of displaced persons of low and moderate income, provide either:
  - a. Compensation sufficient to ensure that, for a forty-two (42) month period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds thirty percent (30%); or
  - b. If elected by a family, a lump sum payment equal to the capitalized value of the benefits available under sub clause (1) to permit the household to secure participation in a housing cooperative or mutual housing association.
2. Persons displaced shall be relocated into comparable replacement housing that is:
  - a. Decent, safe, and sanitary;
  - b. Adequate in size to accommodate the occupants;
  - c. Functionally equivalent to the displacement dwelling; and,
  - d. In an area not subject to unreasonably adverse environmental conditions from either natural or human sources.
3. Persons displaced shall have the right to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if such persons determine that it is in their best interest to do so; and, where a claim for assistance under subparagraph (a) is denied by

the Subgrantee, the claimant may appeal to Thornton and then to HUD and the decision of Thornton shall be final unless HUD or a court determines the decision was arbitrary and capricious.

B. Thornton Appeal Procedures - General Statement: Any claimant may appeal in the following manner:

1. Procedures: The claimant will file a written appeal within three (3) working days from the initial denial of claim, providing detailed information which substantiates the complaint with Thornton, with a copy being sent to the NS Administrator. Thornton may invoke an immediate stay of the decision upon receipt of such complaint. Within fifteen (15) working days after receipt of such complaint the NS Administrator will investigate the complaint and render a decision.
2. In the event that the dispute is not resolved between Thornton and the claimant, the claimant shall within three (3) working days after the dispute is not resolved, send a copy of the original complaint, along with a cover letter to Thornton which states that the claimant is unsatisfied as to the response by the NS Administrator. A copy of the cover letter shall be sent to the NS Administrator. Upon receipt of the complaint by the NS Administrator, Thornton will: 1) Render a written decision within fifteen (15) working days after receipt of the complaint; and 2) Forward the complaint to the U.S. Department of Housing and Urban Development (HUD).

## **XVI. AFFIRMATIVELY FURTHERING FAIR HOUSING**

Thornton and the Contractor shall affirmatively further fair housing in addition to conducting and administering its Project 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.

## **XVII. UNIFORM ADMINISTRATIVE REQUIREMENTS**

Thornton and the Contractor shall comply with the applicable uniform administrative requirements, as described in 24 CFR Section 92.505.

## **XVIII. POLITICAL ACTIVITY AND LOBBYING**

A. Political Activity - Thornton and the Contractor, when 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. The Contractor, when not a government 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.

B. Lobbying - Thornton and the Contractor certifies by execution of this Agreement that, to the best of their knowledge and belief:

1. 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.
2. 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 this federal contract, grant, loan, or cooperative contract (Contract), the undersigned shall complete and submit 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.
3. The Contractor 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 Contractor 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.

#### **XIX. PROHIBITION AGAINST DISCRIMINATION PROVISIONS**

Thornton and the Contractor 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 activity conducted under this Agreement. The Contractor 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 subgrantee 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.

## **XX. SEPARATION OF CHURCH AND STATE PROHIBITIONS**

Pursuant to 24 CFR Section 92.257, Thornton and the Contractor shall not obligate nor expend any funds under this Agreement that will be used for religious activities or provided to primarily religious entities for any activities, including secular activities. However, HUD funds may be contracted and/or committed to acquire housing from a primarily religious organization.

## **XXI. E.O. 11246 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE**

During the performance of this Agreement, where construction costs shall exceed ten thousand dollars (\$10,000), the Contractor agrees as follows:

1. No Discrimination - Thornton and the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, 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 apprenticeship. The Contractor 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 - Thornton and the Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the subgrantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, or national origin.
3. Labor Unions - Thornton and the Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining contract or other contract or understanding, a notice advising the labor union, or workers' representative of the Contractor'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 - Thornton and the Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Executive Order 11246 Reports - Thornton and the Contractor 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 the Contractor'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 Contractor'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 the Contractor 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 the Contractor will include the provisions of paragraphs (A) through (F) 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 subcontractor or vendor. The Contractor 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 the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by Thornton, the Contractor may request to enter into such litigation to protect the interests to the Parties of this Agreement.

8. Employment Information - The Contractor 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.

## **XXII. FLOOD INSURANCE**

Thornton and the Contractor shall not use HUD funds without further review and approval with respect to the acquisition, new construction, or rehabilitation of its Project located in an area identified by FEMA as having special flood hazards unless flood insurance has been obtained in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) as amended.

## **XXIII. 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 24 CFR Section 85.36(e) to award a fair share of subcontracts to small and minority and women's businesses, Thornton and the Contractor shall maintain documentation of its efforts to assure small, minority, and women's businesses are considered and used where possible as provided for under 24 CFR Section 85.36(e) which is incorporated herein by reference.

## **XXIV. RELOCATION AND REAL PROPERTY ACQUISITION**

Where Thornton and the Contractor uses funds under this Agreement to relocate or acquire real property, the Contractor shall be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) and as set forth in 49 CFR Part 24, which provisions shall be incorporated herein by reference.

## **XXV. DEBARRED OR SUSPENDED CONTRACTOR**

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 24 CFR 85.35. The Contractor shall submit to

Thornton with this Agreement ownership information and shall submit to Thornton any and all subcontractors and subcontractor ownership information within five (5) working days after a Contract or understanding has been executed or reached between the Contractor and sub-contractor.

## **XXVI. COMPLIANCE WITH APPLICABLE FEDERAL LAWS**

At all times during the performance of this Agreement, Thornton, the Contractor and any subcontractors shall strictly adhere to all applicable federal, state, county and city laws, orders, and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. Federal Regulations are incorporated by reference herein as described under 24 CFR Part 85, OMB Circular A-87, "Cost Principles for State and Local Governments", and OMB Circular A-133, "Audits of Higher Education and Other Nonprofit Institutions". The applicable federal laws, and regulations include, but are not limited to, the following:

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) providing 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, requiring 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.) requiring 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.) providing for the preservation of historic and archaeological data that would be lost due to federally funded development and construction activities.
5. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et seq.) prohibits undertaking 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.) requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided unless it is determined that there is no practical alternative to such construction and that the proposed action includes all practical measures to minimize potential damage.
7. Safe Drinking Water Act of 1974, (42 USC 201, 300 et seq., 7401 et seq.) as amended, prohibiting 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, requiring that actions authorized, funded, or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species which is determined by the Department of the Interior, after consultation with Thornton, to be critical.
9. The Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.) as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect 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, requiring 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) providing 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. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedures for selecting Contract appraisers and Contract negotiations, furnishing to owners of property to be acquired a written summary of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation. Moving expenses and up to

twenty-two thousand five hundred dollars (\$22,500) or more for each qualified homeowner or up to five thousand two hundred fifty dollars (\$5,250) or more for each tenant are potential costs.

13. Davis-Bacon Fair Labor Standards Act, (40 USC 276a -276a-5) requires that, on all Contracts and subcontracts which exceed two thousand dollars (\$2,000) for federally assisted construction, alteration or rehabilitation, laborers and mechanics employed by the Contractor, General Contractors, or subcontractors 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 continues family units.)

Volunteers - The prevailing wage provisions of this Act do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

Sweat equity - The prevailing wage provisions of this Act do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for home ownership or provide labor in lieu of, or as a supplement to, rent payments.

14. Contract Work Hours and Safety Standards Act of 1962, (40 USC 327 et seq.) 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.
15. Copeland "Anti-Kickback" Act of 1934, (40 USC 276) (c) prohibits and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.
16. 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, prohibits 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.

17. Section 3 of the Housing and Community Development Act of 1968, (12 USC 1701 (u)) as amended, provides that, to the greatest extent feasible, opportunities for training and employment that arise through HUD-financed Projects will be given to lower income persons in the unit of the Project area, and that Contracts be awarded to businesses located in the project area or to businesses owned, in substantial part, by residents of the Project area.
18. 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 gender under any program or activity funded in whole or in part under Title I (Community Development) of the Act.
19. 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.
20. The Fair Housing Act, (42 USC 3601-20) as amended, prohibits housing discrimination on the basis of race, color, religion, gender, national origin, handicap, and familial status.
21. 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, gender or national origin in the sale or rental of housing built with federal assistance.
22. 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.
23. Section 504 of the Rehabilitation Act of 1973, (29 USC 793) as amended, providing 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.

24. Drug Free Workplace. The Contractor shall comply with the Drug Free Workplace Act of 1988, as amended, and any regulations promulgated thereunder.

## **XXVII. TERMINATION AND EXCUSABLE DELAYS**

- A. Termination for Cause. In accordance with 24 CFR 85.43, Thornton may suspend or terminate this Agreement if the Contractor materially fails to comply with any term of this Agreement. In such case Thornton may, for cause, terminate this Agreement in advance of the end of the stated Period of Completion by giving written notice to the Contractor at least five (5) working days in advance of the effective termination date to cure any such breach and shall state in the notice the reason or reasons for the termination, which includes (but are not limited to) the following;

1. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies, or directives as may become applicable at any time;
2. Failure, for any reason, of the Contractor to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of HUD funds provided under this Agreement;  
or
4. Submission by the Contractor to the Thornton reports that are incorrect or incomplete in any material respect.

Thornton retains the right and may, at its option, make written demand for repayment of, and Contractor shall immediately upon receipt of such written demand of Thornton, repay all sums received by the Contractor 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 Contractor may retain amounts which reflect payment for Work satisfactorily completed.

- B. Termination for the Convenience of Thornton. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either Thornton or the Contractor, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, Thornton shall give notice thereof to the Contractor as provided in subparagraph A above, and the Contractor shall be paid for all Work satisfactorily completed commensurate with the amount of Work done on the Scope of Services up to the date of termination



less all amounts previously paid, and in addition thereto, any other amount as mutually agreed upon by the Parties for the documented direct, and incidental termination expenses due to the termination. If Thornton determines that the remaining portion of the Award will not accomplish the purpose for which the Award was made, Thornton may terminate the Award in its entirety.

- C. Termination for the Convenience of the Contractor. The Contractor may terminate this Agreement at any time in advance of end of the Period of Completion with the consent of Thornton. The Contractor 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. The Contractor shall be paid for all Work satisfactorily completed commensurate with the amount of Work done on the Scope of Services up to the date of termination less all amounts previously paid; provided, however, the Contractor shall pay or refund to Thornton, or Thornton may offset against any balance due or that becomes due the Contractor, 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 Agreement Price or the cost of the Scope of Services plus Thornton's expenses. In addition to the foregoing, the Contractor 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.
- D. Records and Subcontracts. Upon any termination of this Agreement in advance of its expiration date, all undelivered documents, maps, models, photographs, reports or copies thereof, materials, equipment, supplies or other items prepared by the Contractor or its subcontractors for use in the Agreement 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. The Contractor shall also immediately notify Thornton of all subcontracts, Purchase Orders, or other commitments of the Contractor 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 the Contractor of its responsibilities to maintain Scope of Services records in accordance with this Agreement.
- E. Reversion of Assets. Upon the completion of this Agreement all equipment acquired, in whole or in part, with funds under this Agreement if sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Contractor for activities under this Agreement shall be:
1. Transferred to Thornton for the CDBG program, or
  2. Retained after compensating Thornton (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

- F. Termination Hearings and Appeals. The Contractor retains the right to such hearing, appeal, or other administrative proceeding as the Contractor is entitled to under applicable statutes or regulations.
- G. 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 projects, any CDBG funds not utilized by the Contractor for the services described in the Scope of Services, Exhibit "A" or any assets which reverted to Thornton pursuant to this Agreement.

## **XXVIII. CLOSE-OUTS**

The Contractor's obligations to Thornton shall not end until all close-out 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), and determining the custodianship of records.

## **XXIX. VIOLATIONS AND BREACHES OF AGREEMENT**

- A. Restriction on Disbursements. Notwithstanding any provision appearing to the contrary, Thornton may withhold payments or disbursements under this Agreement to the Contractor where the Contractor fails to comply with all applicable provisions found in this Agreement and with all other HUD requirements applicable to the Scope of Services.
- B. Setoff. Notwithstanding any provision appearing to the contrary, the Contractor shall not be relieved of liability to Thornton for damages sustained by Thornton by virtue of any breach of this Agreement by the Contractor. Thornton may withhold payment of compensation to the Contractor for the purpose of setoff until such time as the exact amount of damage incurred by Thornton which would be due from the Contractor is determined and paid. Such damages may include funds that Thornton must return to HUD because of HUD's disqualification of Scope of Services funded.

## **XXX. INTEGRATED DOCUMENT**

This Agreement, including all Exhibits, embodies the entire understanding between Thornton and the Contractor for the Scope of Services and their terms and conditions. No verbal Agreements or conversation with any officer, agent, or employee of Thornton, or the Contractor 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.

### **XXXI. NON-ASSIGNABILITY**

The Contractor may subcontract the performance under this Agreement in whole or in part; however, the responsibility for the performance of this Agreement shall not be assigned or transferred by the Contractor 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.

### **XXXII. SUCCESSORS**

The Contractor covenants that the provisions of this Agreement shall be binding upon its heirs, successors, subcontractors, representatives, and agents.

### **XXXIII. 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 Community Development Block Grant 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.

### **XXXIV. SEVERABILITY CLAUSE**

The declaration by any court or other binding legal authority that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement unless said provisions are mutually dependent.

### **XXXV. 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.

### **XXXVI. THORNTON EXECUTION OF CONTRACT**

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

### **XXXVII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**

The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by any applicable City regulation, rule, and/or ordinance. The Parties agree not to deny the legal effect or enforceability of the Agreement solely

because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

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

CITY OF THORNTON, COLORADO:

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

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

ATTEST:

CITY OF THORNTON, COLORADO:

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

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

ATTEST FOR FIRM SIGNATURE: (If corporation)	XXXXXXXXXXXXXXXXXXXXX:
_____ Signature	_____ Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title

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## EXHIBIT A

### SCOPE OF SERVICES/PROJECT REQUIREMENTS

#### PROJECT DESCRIPTION

Located in Thornton's Ward 1, Loma Linda Park lies at the southeast corner of the intersection of Grant Street and 100th Place. The park is adjacent to a small shopping center and is often visited by families attending the adjacent church or looking for a quiet place to picnic while their children play. The 0.3-acre Park includes a 3,659+/- SF level play area contained by an existing concrete curb and surfaced with engineered wood fiber (EWF). Installed in 2004, the play equipment and picnic seating for Loma Linda Park are outdated. The play area appears to be missing a piece of equipment in the southwest corner as the current swing configuration does not quite fit. The park benefits from several existing shade trees. The playground is bordered on all sides by a concrete sidewalk that needs repairs to address trip hazards and to be made compliant with ADA regulations (as per attached Appendix D).

#### PROJECT SCOPE

The goal for this project site is to replace play equipment with new features that maximize the play value of the existing small playground footprint and give the playground a unique visual style and hard-cover shaded picnic seating. Play equipment should include a variety of play opportunities (ex. treehouse or other fort-like structure that allows users to get high off the ground with active elements like slide, climbers, and/or freestanding swings/spinners and sensory/inclusive play).

- Demolish and dispose of existing play equipment, EWF surface. Picnic tables to be removed by City.
- Design, procure, install updated play equipment and hard-cover shaded picnic tables.
- Design specify, Procure and install new EWF surfacing.
- Freight, bond, contingency, and all other charges to be included in cost estimate.
- Demolish and replace concrete sidewalk segments around play area (noted in Appendix D) in accordance with City of Thornton Standard Concrete Specifications. This specification represents Thornton's minimum standards in regard to installation, movement, cracking, finish, replacement requirements, and overall appearance of concrete flatwork. This specification is not a complete specification but is intended to supplement Project specific specifications. In the event of a conflict between this specification and any other project or nationally recognized specification including, but not limited to, ADA, AASTHO, COT standards, and CDOT standards, the more stringent specification shall apply.

All services shall be performed in conformance with applicable Federal, State and local laws, rules and regulations.

### **SUMMARY OF DESIRED PROJECT ELEMENTS**

Following are major elements and objectives of the proposed project. Contractor is expected to help contribute to development of the project program based on their expertise and knowledge of comparable projects nationwide.

All play equipment and structures shall meet ISO 9001/ISO 14001; ASTM standards for equipment (F1487-07a) and for use zones and must meet current accessibility regulations. All equipment must meet IPEMA certifications and must follow the CPSC Handbook for Public Playground Safety. Concrete shall conform to City of Thornton Section 600 – Concrete – 4500 psi CDOT Class D concrete with fiber mesh reinforcement and shall meet ADA standards. New concrete flatwork to be connected by dowels to adjacent concrete segments as per City of Thornton concrete standard detail and specifications

The existing concrete sidewalk has segments in need of renovation to achieve ADA compliance (noted in Appendix D). The existing playground curb will remain. All respondents must measure and verify the existing play area, existing site conditions and verify that all proposed playground equipment will work with the current site configuration including with existing tree locations.

#### **Demolition and Playground Surfacing**

Contractor shall provide the preparation and compaction of the sub-base for the installation of new equipment and will excavate the play area to a depth of 12-inches. Contractor shall remove and dispose of the existing EWF and equipment including below-grade components. Contractor shall also provide the Engineered Wood Fiber (EWF) material for the playground surfacing after installation of the playground equipment.

Contractor shall be responsible for ensuring that dirt removed for installation is evenly distributed within the playground area at the conclusion of install. Coordination between the Contractor and the City of Thornton will be essential to meet the project timeline

#### **SCHEDULE:**

Due to federal grant funding source requirements, this project has an accelerated schedule that must be met. All construction for this project must be completed by May 28, 2024, and final invoicing to be submitted. With that understanding, Contractor shall adhere to the following schedule requirements:

*Design Phase* - Design activities must commence within seven (7) calendar days of Design Notice to Proceed (D-NTP) and be complete no later than twenty one (21) calendar days. Within this timeframe, Contractor shall:



1. Conduct an Initial Coordination meeting with Thornton representatives to review proposal and discuss desired amenities as described in the Scope of Work.
2. Conduct any needed survey of existing site to ensure proper fit of proposed improvements.
3. Submit preliminary pre-design report for Thornton review, including report on equipment availability.
4. Conduct a follow-up meeting to seek Thornton feedback.
5. Submit revised plans based on Thornton feedback for final approval.

Note, during the Design Phase, Contractor shall consider availability of equipment and materials and not suggest the incorporation of anything that cannot be procured and installed within the allotted time. Furthermore, all materials must comply with Federal Buy American requirements and Contractor must provide a report on the availability of all major equipment/materials to be incorporated in the final design.

*Construction Phase* - Upon completion of the Design Phase, Contractor shall commence with construction following approval of the final design and specifications and issuance of the Construction Notice to Proceed (C-NTP). Note, it is Thornton's desire to limit the unavailability of public use of the existing park, so Contractor shall verify timing of the delivery of playground equipment prior to commencing with demolition activities and schedule no more time between commencement of demolition activities and installation of new park amenities than needed. Prior to commencement of construction, Contractor shall provide a schedule of activities for Thornton approval.

All Construction activity shall be complete and invoiced by May 31, 2024.

## **DESIGN:**

### Play Equipment

Thornton desires commercial-grade composite play structures suitable for 5-12-year-olds that provides opportunities for users of various sizes and abilities to play individually and in small groups, to get high off the ground, to play underneath, to have graduated levels of activity challenge, and to have variety in play activities. Play equipment selection may also include stand-alone equipment as space allows to add variety in play type and intensity. Artificial-looking plastic boulders, plastic log climbers, and spring bouncers are NOT desirable. Wider bed slides (for larger proportioned users) and straight slides, multi-user spinners, and varied swing types (i.e. toddler, belt, ADA, shared, etc.) are desirable when possible. Specific makes, models, and configurations of play equipment to be determined through competitive proposal.

Manufacturer's plans shall be IPEMA certified. Manufacturer's plans and Contractor's installation shall comply with applicable ASTM, CPSC, and ADA requirements and guidelines current at the time of contract award. Compliance shall be the sole responsibility of the Contractor. The Owner shall not be responsible for verification of ASTM, CPSC, and ADA compliance.

Posts for play component structures shall be aluminum.

Contractor shall provide an itemized list of proposed playground features including manufacturer, material information, model number, specifications and warranty details (equipment and installation). In addition, each proposed structure or piece of equipment shall include one (1) or more color photographs illustrating equipment appearance, layout, color options and if applicable, design options.

Wood Fiber Resilient Surfacing:

'Fibar' engineered wood fiber, or approved equal, meeting ASTM1951. Install 12" initial settled depth over porous geotextile fabric. One month following installation, Contractor shall check settled depth of wood fiber and top-dress as needed to maintain the greater of 10" total settled depth or minimum depths as required by CPSC and or other applicable guidelines.

Furnishings:

Contractor shall include installation of two (2) new shaded picnic tables and two (2) new benches as noted on Appendix E. Contractor shall also include nine (9) 2'x3' squared grey/tan boulders (height to vary between 18" and 24") to replace bollards on sidewalk – field fit with Owner approval - as shown on Appendix E.

Picnic tables shall be Open Air Series Canopy Picnic Table with Round Perforation (or approved equal) as shown below. Benches and trash receptacles shall be matching style and color to complement play equipment.

**Canopy Tables | Perforated Steel** 



**Model 320-P6**

Constructed with 4" square tube structural steel, MIG welded support arms and dual pedestal frames are protected in a superior powder-coated finish. Two-post design will be appreciated by landscape crews for easy accessibility during maintenance.

**Overall Dimensions**

79-1/2"L x 77-3/4"W x 95-7/8"H"

\*From Grade when Installed

**Cool Combination**

Picnic tables with integrated permanent canopy tops—a very cool combination that produces comfortable and inviting seating areas. These canopy tables offer mild sun protection with a steel perforated pattern arched canopy and feature complimenting table tops and seats.

**Matching Products**



Classic Style Perforated Steel Trash Receptacles



Classic Style Thermoplastic Coated Perforated Bench

Canopy Tables are perfect fixed attractions to enhance parks, playgrounds, forest preserves or business complex outdoors areas. Engineered to wipe clean with ease and dry quickly, these low maintenance table top and seat surfaces are finished in an impact resistant polyethylene coating.

**Canopy/Table/Seat Color Options**



**Frame Color Options**



Play equipment, bench, and picnic tables installation shall comply with manufacturer's recommendations. Overhead events shall be set at manufacturer's recommended maximum setting for ages 5-12.

Equipment and furniture colors shall be proposed during design phase and approved by Thornton prior to construction.

**Demolition/Removal and Replacement/Site Preparation**

Contractor shall incorporate the demolition and/or repair of existing features into final plans, as identified in provided Appendix E. This includes, but is not limited to the following:

1. Proper removal and disposal of play structure, swing set, spinner, and footings.
2. Removal of two (2) surface mounted picnic tables and two (2) park benches. Contractor shall patch bolt holes as needed with non-shrink grout.
3. Removal of approximately of existing engineered wood fiber (EWF) from existing playlot confines (approximately 3,840 SF at 12" depth – Contractor shall verify).

4. Removal and replacement of concrete sidewalk panels and access ramps as indicated in Appendix D. On replacement concrete, Contractor shall excavate and compact as needed to allow for 6" base course and 6" depth of new concrete.
5. Removal of sixteen (16) concrete bollards as indicated on plan. Contractor shall patch bollard holes with vinyl concrete or approved equal.

## **CONSTRUCTION:**

Site access and construction limits shall be determined during design or construction meetings with the City of Thornton (Thornton). Construction activity shall be restricted to assigned accesses and limits. Contractor shall be responsible for repair of damage to existing improvements made necessary by construction-related activities.

### Surveying/Layout/Site Grading:

Contractor is responsible for conducting any needed additional survey and layout as needed to complete design and construction. This includes verifying adequacy of play area dimensions by field measurement prior to ordering play equipment.

Contractor shall stake and layout the defined limits of disturbance for Owner approval. Contractor shall also Provide hold-downs as needed for construction of related improvements and provide haul-off and proper disposal of excess excavated material. Subgrade materials shall all be compacted to 95% standard Proctor density or better under pavements and curbs. Owner's approval of site grading and subgrade preparation prior to installation of related improvements is required.

### Concrete

Work shall be performed in accordance with City of Thornton Standard Concrete Specifications. This specification represents Thornton's minimum standards in regard to installation, movement, cracking, finish, replacement requirements, and overall appearance of concrete flatwork. This specification is not a complete specification but is intended to supplement Project specific specifications. In the event of a conflict between this specification and any other project or nationally recognized specification including, but not limited to, ADA, AASTHO, COT standards, and CDOT standards, the more stringent specification shall apply.

Contractor shall reference Exhibit F of the Agreement for the City of Thornton Standard Concrete Specifications.

### Project Site Fencing and Security

Contractor shall provide site fencing during the installation process and will be responsible for securing all equipment and materials and for ensuring site safety for employees and the public.

General Construction Requirements:

1. Contractor shall procure and install new play equipment per manufacturer's instructions/requirements/recommendations.
2. See also City of Thornton – Loma Linda Park ADA Assessment – provided in Appendix D.
3. Contractor shall straighten one (1) existing light fixture as shown on plan.
4. Contractor shall restore landscaping as necessitated by site improvements.
5. Contractor shall prepare surfaces of bike racks and repaint to match furnishings.
6. Contractor shall not willfully proceed with construction when it is obvious that unknown obstructions, area discrepancies and/or grade differences exist. Such conditions shall be immediately brought to the attention of the Owner.
7. Contractor shall be responsible for locating all underground utilities, pipes and structures prior to construction. Contractor shall protect existing utilities during all demolition and construction operations. Contractor shall take sole responsibility for costs incurred to repair any damage to utilities that known or should have been known to exist under State of Colorado 811 laws.
8. Contractor shall be responsible for any coordination with subcontractors as required to accomplish all construction operations. Contractor shall set all piping, conduit, sleeves, etc. in place prior to installing construction items.
9. All existing improvements to remain shall be properly and adequately protected from damage during construction and demolition operations. Contractor shall restore to the original condition any existing items that are damaged or disturbed in any way.
10. Contractor to properly dispose of all materials specified to be removed off-site.
11. Contractor shall be responsible for obtaining all permits to satisfy all pertinent local, regional, state, and federal regulations.
12. All equipment and materials purchased and installed as part of this project must comply with Buy America federal requirements, as is outlined in the Agreement

## Supplemental Information

Site vicinity map highlighting Loma Linda Park Playground



### Existing conditions





LL 1 - ramp.jpg

LL 2 NS.jpg

LL 3 NS.jpg

LL 4 - crest.jpg

LL 5 - crest2.jpg



LL 6 - NS.jpg

LL 7 - rack.jpg

LL 8 - NS.jpg

LL 9 - corner.jpg

LL 10 - NS.jpg



LL 11 - NS.jpg

LL 12 - NS.jpg

LL 13 - tree.jpg

LL 14 - tree.jpg

LL 15.jpg



LL 16 - corner NS.jpg

LL 17 - big gap.jpg

LL 18.jpg

LL 19 - NS.jpg

LL 20 - NS.jpg



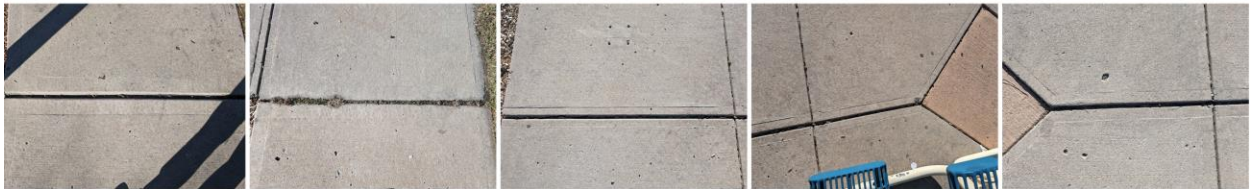
LL 21 - NS.jpg

LL 22.jpg

LL 23 - bike path.jpg

LL 24 - bench.jpg

LL 25 - drain.jpg



LL 26 - drain2.jpg

LL 27 - moss.jpg

LL 28 - picnic.jpg

LL 29 - diamond.jpg

LL 30 - diamond2.jpg



## EXHIBIT B

### PROPOSAL PRICING

Vendors submitting a proposal shall provide pricing in the table below with the sum of all items to equal a Total Cost of \$300,000.

Item	Units	Quantity	Cost/Unit	Cost
Design/Admin	LS	1		
Demo/Required Site Repairs	LS	1		
Installation of proposed new play equipment & site improvements	LS	1		
Bond Costs	LS	1		
			<b>Total Cost</b>	<b>\$300,000</b>

#### Table of Additional Unit Costs:

Vendors shall provide unit pricing that will be used as the basis for change orders if additional work is needed not identified in the design/established requirements.

Item	Units	Quantity	Cost/Unit	Total Cost
Demo – concrete walk – 6”	SF	252		
Concrete walk – new 6”	SF	252		
Base Course – 6”	SF	252		
Trip hazards – cut/grind high edges <2” Average length 6’	EA	30		
Demo – bollards – 15” diam., 18”H	EA	16		
Vinyl Concrete – 15” diam., 6” depth	EA	16		
Sawn Top Boulders – 2’x4’x26”	EA	8		
Prep and Paint Bike Racks	EA	2		

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## **EXHIBIT C SPECIAL CONDITIONS**

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30. RESERVED
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32. TEMPORARY ACCESS AND SAFE TRAVEL MAINTENANCE
33. WATER USE

1. **ACCESS TO PUBLIC FACILITIES**

The Contractor shall assure that safe access to public facilities including, but not limited to, parking lots, picnic shelters, playgrounds, and pedestrian ways, is provided. Any disruption to the public's normal use of such facilities shall not occur without the express written permission of Thornton.

2. **AGREEMENT SIGNATURE**

The Contractor shall return all signed Agreements with W-9 Forms, all appropriate Bonds, Insurance Certificates, and Additional Insured Endorsements **within ten (10) Calendar Days of receipt of Notice of Award.**

3. **APPROPRIATIONS**

Pursuant to C.R.S. § 24-91-103.6, as may be amended from time to time, the amount of money appropriated by Thornton for this Agreement is equal to or in excess of the original Agreement Not-to-Exceed Price. No Change Order or other form of order or directive by Thornton requiring additional compensable Work to be performed, which Work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement, shall be issued unless the Contractor is given written assurance by Thornton that lawful appropriations to cover the cost of the additional Work has been made or unless such Work is covered under the remedy-granting provision of this Agreement.

In the event that the Thornton City Council reduces the appropriation or fails to appropriate additional funds should they be needed for the continuation of this Agreement, Thornton may, upon prior written notice as provided for herein, terminate this Agreement without penalty and thereupon be released of further obligations pursuant thereto.

4. **CLEANUP**

The Contractor shall make every effort to contain its construction operations to the smallest area possible. All areas which have been disturbed shall be returned to their original grade and condition, or better. Contractor shall clean all, sidewalks, trails, park facilities and/or areas affected by its construction in accordance with Thornton's Standards and Specifications for the Design and Construction of Public Improvements, Latest Edition. Contractor shall have Construction Equipment available on the Project site, including sweepers, hoses and other items, as necessary, to clean up at least on a daily basis during construction, or as required or otherwise directed by Thornton.

5. **RESERVED**

**6. CONTINUATION OF UTILITY SERVICE**

Utility service shall be maintained to all areas at all times during construction of the Work, except when it is necessary to shut down a line to make a connection with a new line. Residents shall be given twenty-four (24) hours written and verbal notice by the Contractor when it is known that their service will be interrupted. The appropriate Fire Rescue Authority shall be kept advised of the status of all fire hydrants affected by any Work.

**7. COORDINATION WITH OTHER ENTITIES**

The Contractor is advised that completion of this Agreement may require coordination and cooperation with other trades, other Contractors under separate Agreements with Thornton involved in the Project or an adjacent project, or with other entities with an interest in the Project. Special efforts will be made by the Contractor not to interfere with or delay other trades or other Contractors

**8. CONTRACTOR'S DAILY SITE REPORTS**

The Contractor shall submit a Daily Site Report to Thornton by 8:00 a.m. each Work day for the previous Work day unless another schedule is approved by Thornton. If the Contractor fails to comply with this requirement, Thornton may reject any pending Applications for Payment until the Contractor submits all reports that are due. The report shall, at a minimum, describe:

- A. Type(s), location(s), quantity(s), and progress of Work performed consistent with the Schedule of Agreement Items and Prices as defined by the Agreement Documents;
- B. On-site labor for craftsman by craft, Subcontractor, supervision, and office personnel, with activities performed, number of personnel and hours worked on each activity;
- C. Construction Equipment (number, type, and hours) utilized on-site and for which activities;
- D. Type(s) and quantity(s) of Material and Equipment incorporated into the Work;
- E. Unanticipated problems encountered;
- F. Climatic data (temperature, precipitation, wind) for morning and afternoon;
- G. Accidents;
- H. Damage to in-place Work;
- I. Materials or Equipment received at the Project site;

- J. Results of any testing;
- K. Any unforeseen conditions or any Work which Contractor believes may be eligible for additional compensation or extra time. If Contractor notes any Work which it believes may be eligible for additional compensation or extra time, Contractor shall obtain Thornton's Representative's initials and date on the relevant section of the Daily Site Report prior to submission to Thornton and shall immediately follow the procedures described in the Agreement under Changed or Extra Work, Claims for Extra Costs, and/or requests for an extension of the Agreement Time. Thornton's Representative's initials on the Daily Site Report shall not constitute approval of any claim for extra cost or time, but shall merely indicate the date the Contractor knew or should have known of a potential claim; and
- L. Other notable events.

9. **CONTRACTOR'S SCHEDULE OF WORK**

The Contractor shall submit for review by Thornton, within fourteen (14) Calendar Days from Approval of Final Design, its baseline Schedule of Work in graphic bar chart form ("Schedule of Work"). This Schedule of Work shall be the Contractor's working schedule and shall be used to plan, organize, and execute the Work, record and report the progress of the Work, and forecast remaining Work. The Contractor shall be responsible for assuring that all Subcontractor Work and acquisition and delivery of Materials and Equipment, as well as its own Work, are included in the Schedule of Work and that the Schedule of Work represents a coordinated plan of Work. The Schedule of Work shall be periodically updated as required herein.

The Schedule of Work shall clearly show all intermediate Milestone Dates, Substantial Completion of the Work, procurement, fabrication, and construction activities, activity descriptions and durations, activity start and finish dates, specified phasing and sequencing requirements, and the proposed sequence of activities required for the orderly performance and completion of all elements of the Work. The selection and number of activities shown on the Schedule of Work shall be subject to Thornton's review and acceptance. Activity durations shall be in Calendar Days, and in general, shall not be less than one (1) Calendar Day nor exceed fourteen (14) Calendar Days. Seasonal weather conditions, holidays, long lead time procurements, and other contingencies shall be considered in the planning and scheduling of the Work. The Contractor, at its option, may provide a Critical Path Method (CPM) schedule. The Contractor's attention is called to the General Conditions section titled Extension of Agreement Time, which requires a CPM schedule analysis to substantiate a request for extension of Agreement Time, even if the Contractor does not provide a CPM schedule for all of the Work.

Acceptance of the Schedule of Work by Thornton shall be a Condition Precedent to the making of any progress payments to the Contractor. Acceptance of the Schedule of Work by Thornton; however, shall not relieve the Contractor of its sole

responsibility for the accuracy or feasibility of the Schedule of Work, or of its sole responsibility to complete the Work in accordance with the Agreement Documents, nor does such acceptance by Thornton warrant, acknowledge or admit the reasonableness of durations, sequence, or logic of the Schedule of Work.

The Schedule of Work shall be monitored on a weekly basis and up-dated on a bi-weekly basis to incorporate actual start and finish dates, to record actual progress achieved during the reporting period, and to provide a more accurate schedule of the next period's Work. A copy of the then current up-dated Schedule of Work shall be submitted to Thornton with the Contractor's Application for Payment (as defined by Special Conditions - Measurement for Payment and General Conditions - Progress Payments). The then current Schedule of Work shall be accompanied by a written narrative, which shall address the status of major activities, the impact of Change Orders, the impact of delaying events, if any, activities that are behind schedule, and actions that are being taken to improve progress and attain compliance with the Agreement Time for completion of the Work.

If at any time the Contractor's progress is determined by Thornton to be inadequate to meet Milestone Dates, achieve the Substantial Completion Date or otherwise comply with the Agreement Documents, Thornton may notify the Contractor. Upon receipt of such notice, the Contractor shall immediately take all steps necessary to improve the progress of the Work so that it will meet the Milestone Dates and the Substantial Completion Date and otherwise comply with the Agreement Documents. Thornton reserves the right to require the Contractor to prepare a well-defined recovery schedule in order to insure that Substantial Completion and/or any Milestone Dates are met.

If, within a reasonable period of time after notice is given as outlined above, Thornton determines that the Contractor has not sufficiently improved progress, Thornton may require the Contractor to, at the Contractor's expense and at no additional cost to Thornton, increase the Contractor's work force, work additional hours per day or days per week, increase the number of shifts per day, or increase the amount of Construction Equipment. Neither such notice by Thornton nor Thornton's failure to issue such notice shall relieve the Contractor of its obligation to achieve the quality of Work and rate of progress required by the Agreement Documents. The Contractor shall not be entitled to any additional compensation for acceleration or other costs it may incur.

## **10. DISPUTE RESOLUTION**

- A. Unless otherwise agreed in writing, Contractor shall continue to perform the Work during any dispute or dispute resolution proceedings. If Contractor continues to perform, Thornton shall continue to make payments in accordance with this Agreement. The Parties shall attempt to resolve the dispute between the Parties' chosen representatives.



- B. If either Party claims that attempts to resolve the dispute has reached an impasse, the Parties shall refer the dispute to the City Manager or City Manager's designee(s) to reach resolution through good faith direct discussions. The Parties agree the representatives should possess the necessary authority to resolve the dispute. If the dispute remains unresolved after thirty (30) days the Parties shall submit the dispute to mediation, which shall be held in the City of Thornton. The Parties shall share equally in the mediator's fees.
- C. If mediation is unsuccessful, the Parties may proceed to litigation. Any legal action concerning or arising out of this Agreement shall be brought in the District Court, County of Adams, State of Colorado.
- D. Any action arising out of or relating to this Agreement asserted by Contractor against Thornton shall be brought within two (2) years from when the action accrued pursuant to C.R.S. § 13-80-102(h), as may be amended.
- E. This Agreement shall be governed by the Laws of the State of Colorado notwithstanding its choice of law principles.

**11. DUMP/DISPOSAL SITES**

The Contractor shall be responsible for locating disposal and dump sites and making arrangements for disposal of all material removed from the Project site. This includes concrete, asphalt, unsuitable or unstable trench material, and any other trash, rubbish, or debris generated as a result of the construction of the Work. Asbestos or other hazardous materials will be disposed of in accordance with any and all applicable laws and regulations. The Contractor shall promptly submit copies of the disposal manifests to Thornton to demonstrate proper disposal of all materials.

**12. EMERGENCY PROTECTION**

- A. After the Notice to Proceed for Construction has been issued and continuing through Initial Acceptance, the Contractor shall be solely responsible for protection and safety of the public and the Contractor's/Subcontractor's workers, twenty-four (24) hours a day, seven (7) days a week. Contractor shall also be solely responsible after Initial Acceptance when the Contractor is on the Project site performing any Warranty Work.
- B. Whenever, in the opinion of Thornton, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work, or of adjacent structures or property, and whenever, in the opinion of Thornton, an emergency has arisen and immediate action is considered necessary, then Thornton, with or without notice to the Contractor, may provide suitable protection by causing Work to be done and Materials and Equipment to be furnished and placed. The cost of such Work and Materials and Equipment shall be borne by the Contractor, and if not paid on presentation of the bills,

such costs will be deducted from any amounts due or that become due the Contractor. The performance of such emergency Work shall not relieve the Contractor of responsibility for any damage which may occur.

**13. EXISTING ABOVE GROUND AND UNDERGROUND UTILITIES, FACILITIES, AND EASEMENT LOCATIONS**

- A. Contractor shall comply with §§ 9-1.5-101, C.R.S., *et. seq.*, now and as amended hereafter, regarding location of utilities and utility easements. Contractor shall request a written record of any information from all owners or operators, other than Thornton, of underground facilities (as defined in the statute) regarding the location of the specific underground facilities. Contractor shall comply with all requirements of Article 1.5 of Title 9, C.R.S. as it pertains to the "excavator".
- B. Contractor shall ascertain and notate the following on the Contractor's record Drawings regarding all utilities, facilities, and utility easements:
1. Shown correctly on Agreement Documents (marked correctly in field, marked incorrectly in field);
  2. Shown within a range on Agreement Documents (marked correctly in field, marked incorrectly in field);
  3. Shown incorrectly on Agreement Documents (marked correctly in field, marked incorrectly in field);
  4. Not shown at all on Agreement Documents, but marked in field; and
  5. Not shown on Agreement Documents and not marked in field.
- C. Thornton shall not be responsible for the accuracy or completeness of any information provided by third-party owners or operators of underground utilities and facilities, whether shown on the Agreement Documents and/or located in the field. Contractor shall be responsible to determine the location of all underground utilities and facilities. Thornton will reimburse the Contractor for such underground investigations, such as potholing, as defined in the final Schedule of Values for the construction Not-to-Exceed price.
- D. The center-line locations of underground utilities and facilities which are owned or operated by Thornton shall be shown in the Contract Documents. As part of the Work, Contractor shall, on behalf of Thornton, mark the actual location of such utilities and facilities on the Contractor's record documents to the extent the actual location varies from the location shown in the Contract Documents.

- E. In the event that location of any underground utilities or facilities are "unknown", "uncertain", or within a "range", the Agreement Price shall include, and Contractor shall have full responsibility for, determining the exact location of such underground utilities and facilities by "potholing," "handwork," or such other means as may be necessary to determine the precise location without damaging them. The precise location of such underground utilities and facilities shall be incorporated into the record drawings maintained by the Contractor.
  
- F. Contractor shall notify Thornton immediately and request further direction if a utility or facility shown in the Agreement Documents or marked in the field cannot be found by potholing or handwork within 18" horizontally from the exterior edges of the expected utility location.
  
- G. The cost of all of the following will be included in the Not-to-Exceed price, and Contractor shall have sole responsibility for:
  - 1. Reviewing and checking all information and data provided by all owners or operators of underground utilities and facilities;
  - 2. Locating all underground utilities and facilities within 18" horizontally from the exterior edges of the expected utility location shown or indicated in the Agreement Documents or marked in the field;
  - 3. Coordination of the Work with the owners and operators of all underground utilities and facilities during construction; and
  - 4. The safety and protection of all such underground utilities and facilities and repairing any damage thereto resulting from the Work.
  
- H. If an underground utility or facility is uncovered or revealed, whether by field locates or by construction activities at or contiguous to the Project site, which was not shown or indicated in the Agreement Documents, the Contractor shall promptly after becoming aware thereof and before further disturbing conditions effected thereby or performing any Work in conjunction therewith (except in emergency situations), identify the owner of such underground utility or facility and give written notice of the discovery to that owner, the "Notification Association," and Thornton. The location of all such underground utilities and facilities shall be incorporated into the record drawings maintained by Contractor. Thornton will promptly review the underground utility or facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of its existence. During such time, Contractor shall be solely responsible for the safety and protection of such underground utility or facility.

- I. Contractor shall be allowed an adjustment in the Not-to-Exceed Price, Project Schedule, or both, to the extent that it is necessitated by the existence of any underground utility or facility that is not shown in the Agreement Documents or is not field located within 18" horizontally from the exterior edges of the expected location, and that the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated; provided, however, that the Contractor is performing the Work in the correct location, including both horizontal alignment and elevation, and in accordance with the Agreement Documents, and has adequately performed required potholing or hand excavation in advance of construction. If Thornton and Contractor are unable to agree on entitlement to or the amount or length of any adjustment in the Agreement Price or Agreement Time, Contractor may make a claim in accordance with the claim procedures set forth in the Agreement Documents. In no event shall Thornton be liable to Contractor for any claims, costs, losses, lost profits or damages incurred or sustained by Contractor on or in connection with any other project or anticipated project of Contractor.

**14. FIELD INSPECTIONS AND QUALITY ASSURANCE TESTING SCHEDULING**

Contractor must provide a minimum of two (2) Business Days' notice to Thornton and Thornton's Representative to schedule any field inspections or tests that Thornton will perform through a third party vendor. Failure to give two (2) Business Days' notice may result in a delay in the required inspection or testing. If two (2) Business Days' notice is not provided, the Contractor will not be entitled to a claim for additional Agreement Time and will not be relieved of required acceptance inspections or tests of any finishing, Materials or Equipment.

**15. RESERVED**

**16. LICENSES AND PERMITS**

- A. The Contractor shall be required to obtain, at its expense, all appropriate licenses from Thornton and/or other governing jurisdictions before the start of construction. A Master Plumber's License is required to perform Work on water and sanitary sewer mains in Thornton. Costs associated with obtaining a Master Plumber's License are the responsibility of the Contractor.
- B. Unless otherwise specified or indicated, all permits necessary for construction of the Work, including federal, state, county, and local permits shall be obtained by and paid for by the Contractor.
- C. If required, the Contractor shall obtain a Building Permit and/or a Traffic Control Permit prior to commencing any construction. The Contractor shall obtain a Construction Permit prior to any construction.

- D. Building Permits are obtained from the City of Thornton City Development Building Inspection Division located at 9500 Civic Center Drive, Thornton, CO 80229. Construction Permits are obtained from the City of Thornton City Development Planning Division located at 9500 Civic Center Drive, Thornton, CO 80229. Traffic Control permits are obtained from the City of Thornton Infrastructure Department Traffic Division, located at 12450 Washington Street, Thornton, CO 80241. There is no charge to the Contractor for these permits.

## 17. LIQUIDATED DAMAGES

- A. The Parties agree time is of the essence in the Agreement with respect to the required Substantial Completion Date (which may be changed or extended in accordance with the terms of the Agreement). The Parties further agree the actual damages Thornton would incur are difficult or impossible to calculate with any certainty but the delay would cause an inconvenience, increased cost and loss of use by the public if Contractor fails to substantially complete the Work by the Substantial Completion Date agreed upon by both parties at the Notice to Proceed for Construction.
- B. As a remedy, and not as a penalty for Contractor's failure to meet the Substantial Completion Date, Contractor agrees to pay as Liquidated Damages in the amount of **six hundred seventy-seven dollars and ninety cents (\$677.90)** for each Calendar Day past the date(s) set forth in the Notice to Proceed for Construction or for each day the Contractor fails to achieve Substantial Completion of the Work, as required by the Agreement.
- C. Thornton shall have the right to offset any such amounts owed to Thornton as Liquidated Damages and not as a penalty, in whole or in part against amounts due to Contractor under the Agreement. Thornton will notify the Contractor in writing of any Liquidated Damages claim on or before Thornton deducts such sums from money owed and payable to the Contractor. In the alternative, Contractor shall pay such Liquidated Damages (without offset or deduction for any amounts Contractor claims Thornton may owe) by certified or cashier's check or by wire transfer to a bank account designated by Thornton within thirty (30) days of receipt of invoice, which Thornton may issue from time to time until Substantial Completion has occurred.
- D. Thornton's right to Liquidated Damages shall be in lieu of any other damages Thornton may be entitled to collect because of Contractor's delay in achieving Substantial Completion of the Work on or before the required Substantial Completion Date. However, the Liquidated Damages provided to Thornton under this Section shall not limit its other available remedies, which Thornton may have, either at law or in equity, for any breach or failure to perform by Contractor under this Agreement.

- E. No delay by the Thornton will be construed as a waiver of its right to assess or collect Liquidated Damages from Contractor. Notwithstanding the terms of this Liquidated Damages Section, should a court of competent jurisdiction find all or any provisions in Section C, Liquidated Damages, are invalid or unenforceable, Thornton may pursue its actual damages caused by Contractor's unexcused delay.
- F. Also see the General Conditions' Section 27.

**18. MEASUREMENT FOR PAYMENT**

- A. During the Design Phase, the Contractor shall submit invoices for work completed in accordance with the Not-to-Exceed pricing structure in Exhibit C, Schedule of Charges as follows:
  - 1. Contractor shall prepare and send by electronic format a detailed monthly invoice to [ap.invoices@cityofthornton.net](mailto:ap.invoices@cityofthornton.net).
  - 2. Invoices become due and payable thirty (30) Calendar Days after date of receipt by Thornton of a complete and correct invoice.
  - 3. Invoices shall reference the Purchase Order Number assigned by Thornton, and be itemized showing hourly breakdowns for personnel, and other charges.
  - 4. Each invoice will show the total amount from the date of the original Agreement, and any subsequently issued Purchase Orders and amendments that change the amount of the Agreement. In addition, invoices must include billing and payment summaries up to the date of the submitted invoice. Thornton reserves the right to withhold final payment until the Services are complete. Contractor shall not perform any Services without receiving a Purchase Order issued by Thornton.
  - 5. Contractor shall break down invoices by the phases specified in the Scope of Work. Each phase shall be further itemized by cost for each completed task performed for that phase. Contractor will only invoice Thornton for work that is performed to Thornton's satisfaction, or the percentage of work satisfactorily performed for that phase, unless Service Provider has Thornton's written approval in advance. Under no circumstances will Contractor submit an invoice for work for more than the total amount specified for any given phase. Furthermore, under no circumstances may Contractor bill or otherwise invoice for work not specifically authorized.

- B. Upon acceptance of the final design documents, Thornton and Contractor shall convert the Not-to-Exceed cost for construction to a mutually agreed upon Lump Sum for Construction and an approved Schedule of Values will be converted to the Project's Pay Application form for construction activities. The Lump Sum Fee shall not be greater than the Not-to-Exceed cost, minus the total amount of design costs, and the cost of any change orders or amendments.
- C. During the construction phase, Thornton shall determine all quantities, amounts of Work done, and percentages complete under the Agreement. To assist Thornton in determining quantities, the Contractor shall first measure and quantify all Work. At the time quantity measurements are made by the Contractor, Thornton's Representative may be present to verify and agree to such measurements. If Thornton or Thornton's Representative disagrees with Contractor's measurements, Thornton may, at its option, independently measure quantities and adjust payments in accordance with its measurements. The Contractor shall fully cooperate with Thornton in any such endeavor at no additional cost to Thornton.
- D. From quantity figures agreed to by the Parties, it will be the Contractor's responsibility to prepare a monthly Application for Payment for the Work accomplished to date. If the Parties cannot agree on the quantities and the resulting amount of payment, Thornton may, but shall not be obligated to, prepare an Application for Payment on the Contractor's behalf.
- E. Applications for Payment shall be submitted each month, or on another schedule as the Parties may agree upon, on the date designated by Thornton. Failure of the Contractor to timely submit a complete, correct, and certified Application for Payment (accompanied by an updated Schedule of Work) may cause a delay in payment.
- F. By submitting the signed Application for Payment, the Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by the Application for Payment has been completed in accordance with the Agreement Documents, that all amounts have been paid by the Contractor to its Subcontractors and suppliers for Work for which previous Certificates for Payment were issued and for which payments were received from Thornton, and that the current payment shown in the Application for Payment is now due.
- G. The Contractor shall, along with its monthly Application for Payment for Work completed, submit an estimate of the Work which will be completed during the following month.
- H. When items are specified to be paid for by the ton, the following system will be used:

1. Duplicate tally tickets shall be prepared to accompany each truckload of Material delivered. The tickets shall bear at least the following information:
  - a. Truck number;
  - b. Quantity delivered in tons, cubic yards, or other measurement as applicable;
  - c. Driver's name and date;
  - d. Type of Material; and
  - e. Location of delivery by street and stationing on each street.
2. It is the Contractor's responsibility to see that a ticket is given to Thornton's Representative on the day the delivery occurs for each truckload of Material delivered. Pay quantities will be prepared and approved on the basis of such tally tickets.
3. When the Bid item stipulates quantities by weight, they shall be weighed on scales that are in accordance with the requirements of the State of Colorado for similar use. Certified weight bills shall be furnished by the Contractor to Thornton's Representative at the time of each delivery.

**19. MOBILIZATION**

- A. The Pay Item pricing for mobilization shall also include any "startup" or incidental costs necessary to begin the Work, including any necessary Construction Equipment, offices, buildings, Materials or Equipment, personnel that are to be located at the Project site in preparation for the Work, Bonds, Insurance, permits, and any other incidental expenses that cannot otherwise be attributed directly to the other Bid Proposal Pay Items.
- B. Payments for mobilization shall be made on a monthly basis in accordance with the following formula:

Agreement Amount Completed	=	Mobilization Paid
5%	=	25%
10%	=	50%
25%	=	60%
50%	=	100%



- C. The overall Pay Item price for mobilization should not exceed ten percent (10%) of the original Agreement Price. If the overall Pay Item price for mobilization exceeds ten percent (10%), and if Thornton does not reject the Bid, Thornton shall have the option of withholding payment of the amount exceeding ten percent (10%) of the Agreement Price until the date of Final Payment.

**20. NOTICE TO PROCEED**

A written Notice to Proceed (“NTP”) for Design Activities will be issued to Contractor by Thornton after the execution of this Agreement. This Notice to Proceed is only for Design Activities and does not authorize any construction activities. Upon approval of the Final Design documents and conversion of the Not-to-Exceed cost to a Lump Sum, Thornton shall issue a NTP for Construction. The Agreement Documents shall describe the specific Scope of Work requirements for each phase respectively, the method of compensation and the estimated or lump sum cost, and schedule for Contractor to perform all required Work. Contractor shall not begin performing any Tasks associated with the Scope of Work within a phase until Thornton has either issued a written NTP to Contractor.

**21. PROJECT MEETINGS**

- A. Meetings shall be held between Thornton, Contractor, and other applicable entities at a standard time and place, established during the Preconstruction Meeting. Meetings are to be typically held on at least a weekly basis unless otherwise mutually agreed to by the Parties. Thornton shall require the attendance of Contractor’s Superintendent and any other person(s) deemed necessary, including Subcontractors and or suppliers, at these meetings. The meetings shall be conducted by the Contractor for the following purposes:
1. Review the overall progress of the Work and the current status of the Schedule of Work;
  2. Identification and resolution of problems which are or may be impeding the planned progress of the Work;
  3. Coordination of the efforts of concerned Parties so that the Work progresses per the Schedule of Work; and
  4. Maintenance of lines of communication, including sound working relationships between Thornton and Contractor, and a mutual understanding of requirements of the Agreement Documents.
- B. Contractor shall be responsible for the preparation and distribution of written minutes of these meetings to all attendees and other concerned or impacted parties, as designated by Thornton. Contractor shall distribute meeting

minutes within two (2) Business Days of the meeting. Within five (5) Calendar Days of receipt of the meeting minutes, Thornton shall review the content for completeness and accuracy, and note modifications and/or corrections. Contractor shall incorporate modifications and/or corrections into the meeting minutes as deemed appropriate by Thornton, and the revised meeting minutes will be re-distributed to all attendees by Contractor. If Thornton does not note any revisions to the meeting minutes during the five (5) Calendar Day period, then Thornton accepts the meeting minutes as an accurate and complete record of the meeting.

## **22. PROTECTION OF PUBLIC AND PRIVATE PROPERTY**

- A. The Contractor shall make every effort to avoid damage to all public and private property, including, but not limited to, dikes, ditches, roadways, sidewalks, fences, trees, landscaping, structures, and utilities. Thornton assumes no responsibility whatsoever for any damage resulting from the Contractor's operations, whether such damage occurs on public or private property. The Contractor shall defend, indemnify, and hold harmless Thornton from all claims for damage resulting from its operations. Any and all damages due to a disruption of utility service attributed to the Contractor's operations shall be the sole responsibility of the Contractor.
- B. The Contractor shall contact any property owners verbally and in writing where additional access is needed to the Project site. Any damage to such property by the Contractor will be the responsibility of the Contractor. All claims must be settled before issuance of Final Payment.

## **23. QUALITY ASSURANCE INSPECTION AND TESTING**

- A. Quality Assurance inspections and tests such as, but not limited to, fill control (compaction), asphalt density, rebar inspection, and concrete testing, shall be performed by a commercial testing laboratory of Thornton's choosing and at Thornton's expense. The Contractor may observe all such Quality Assurance inspections and tests.
- B. Thornton's Quality Assurance inspections and tests are for Thornton's benefit. Thornton's Quality Assurance inspections and tests are not a substitute for the Contractor's Quality Control responsibilities or its testing and inspection program. The Contractor is solely responsible for performing and paying for all necessary Quality Control Tests.
- C. In the event a Quality Assurance inspection or test fails to meet the criteria established by the Specifications, another inspection or test will be performed after the necessary corrective Work has been completed by the Contractor. The Contractor shall bear the expense of all the re-inspections and/or re-tests required. Thornton shall have the right to back charge the

Contractor for re-inspections and re-tests and to deduct the cost of re-inspections and re-tests from payments due or that become due to the Contractor.

- D. Contractor shall perform excavation Work necessary for compaction testing, as requested by Thornton, at no additional cost to Thornton.

**24. RECORDKEEPING AND AUDITS**

- A. Contractor shall keep full and detailed records and accounts relating to its performance of the Agreement as may be necessary for proper management of the Work. All financial information shall be maintained in accordance with generally accepted accounting principles. Contractor's records and accounts shall include, but not be limited to, all estimating and bid preparation documents (EPD); correspondence; internal office correspondence; internal memos; conversation memorandums; policies and procedures; subcontract files; Change Order files; backcharge logs and supporting documentation; scheduling files; job cost and man-hour records; invoices; delivery tickets; bills of sale; all documentation relating to disputes or claims; safety reports; accident reports; photographs; videos; accounting records; daily reports; and any other supporting evidence deemed necessary by Thornton to substantiate charges, expenses, or costs related to the Agreement.
- B. Contractor's records and accounts shall be open to inspection and subject to audit and/or reproduction in any tangible form, including computer readable data by Thornton, to permit full and complete evaluation and verification of any:
1. Requests or claims by Contractor, its Subcontractors, or its suppliers for any additional compensation related to the Agreement;
  2. Contractor representations, warranties and/or guarantees under the Agreement; or
  3. Legal action by Contractor, its Subcontractors, or its suppliers involving Thornton and related to the Agreement.
- C. Such inspections and audits may require copying from time to time at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation: records; books; papers; documents; subscriptions; recordings; agreements; Purchase Orders; leases; Agreements; subcontracts; commitments; arrangements; notes; daily diaries; supervisory reports; drawings; sketches; receipts, vouchers; memoranda; and any and all other agreements, sources of information and matters that may in Thornton's judgment have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Agreement Documents. Such records subject to inspection and audit shall also include, but not be limited to, those records necessary to evaluate

and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Agreement or to a Claim for additional compensation or time.

- D. Thornton shall be afforded access to all of the Contractor's records and shall be allowed to interview any of the Contractor's employees (including Agreement labor), pursuant to the provisions of this section throughout the term of the Agreement and for a period of three (3) years after Initial Acceptance of the Work, or longer if required by law.
- E. Contractor shall require all Subcontractors, sub-subcontractors and suppliers to comply with the provisions of this section by insertion of the requirements in its written agreements with those parties. Contractor shall cooperate fully and shall cause all related parties, including Contractor's Subcontractors entering into subcontracts, to cooperate fully in furnishing or in making available to Thornton from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- F. Thornton shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space in order to conduct inspections and audits in compliance with this section.

## **25. RETAINAGE**

Thornton shall make progress payments based on Contractor's invoices or Application for Payment and shall make payment to Contractor within thirty (30) Calendar Days after receipt by Thornton of a complete and correct invoice or Application for Payment. For construction activities, Thornton shall withhold retainage of five percent (5%) from each Application for Payment until the Work is one hundred percent (100%) complete and accepted by Thornton and the period for filing verified statement of claims has expired. In no case will the value of the retainage withheld at the conclusion of the Work be less than five percent (5%) of the total Cost of the Construction. Thornton will publicly advertise Notice of Final Settlement as required by 38-26-101 et. seq. C.R.S. Thornton will make Final Payment of retainage, less any sums withheld due to properly filed verified claims, on the date of Final Settlement.

## **26. RESERVED**

## **27. SOILS TESTS**

Soils tests and analysis for planting suitability and compliance with the specifications shall be performed by a commercial testing laboratory. Contractor shall coordinate all testing with Thornton prior to incorporation of the Materials into the Project. All soils shall meet planting specifications stated in the Agreement Documents prior to installation of plant Material. Failure of a soil test may require, at Thornton's sole

discretion, soil amendment and retesting or excavation to a depth of 12” and replacement with acceptable Material. If not included as a Bid Proposal Pay Item, testing shall be at Thornton’s cost, but re-testing required due to any failed tests shall be at the Contractor’s expense.

**28. STAGING AREA**

The Contractor is solely responsible for any staging area to be used during construction over and above any staging area(s) which may be shown on the Drawings. This area shall be secure to prevent loss of Materials and Equipment. Any replacement of lost or damaged Materials and/or Equipment shall be the responsibility of the Contractor at no cost to Thornton.

**29. STOCKPILING MATERIAL OR EQUIPMENT**

The Contractor shall not stockpile Materials or Equipment in the public streets or ROW, except for that which is expected to be used that day unless permanent traffic control is allowed and the stockpile is approved in advance by Thornton. If Material is stockpiled for use that day, the Contractor shall utilize proper traffic control and necessary barricades. At all times, the Contractor shall provide access to the individual residents/users adjacent to the Work, as well as necessary services they may require (e.g. mail service, trash collection, etc.).

**30. RESERVED**

**31. SUBMITTALS**

Thornton’s representatives shall have fourteen (14) Calendar Days to review and approve or reject submittals, unless otherwise stated in the Specifications. Rejected items shall be resubmitted to Thornton and subsequent review by Thornton will be within fourteen (14) Calendar Days. See also General Conditions - Submittals, Shop Drawings, Samples, Service Parts Manuals, and Operator’s Instructions.

**32. TEMPORARY ACCESS AND SAFE TRAVEL MAINTENANCE**

Once Work has commenced in an area subject to pedestrian or vehicular traffic, including bicycles, the Contractor shall provide and maintain access and safe travel conditions by ramping or surfacing with suitable materials to insure safe travel at all times. If, in the opinion of Thornton, the products used and/or the maintenance methods provided are not capable of safely supporting the anticipated vehicular or foot traffic, the Contractor shall either immediately remove the existing products and provide higher quality products, up to and including placement of temporary hot mix asphalt, increase the frequency of maintenance, or both, as may be directed by Thornton. The provision of products and their maintenance to assure access and safe travel at all times shall be considered incidental to the Work, with all costs to be borne by the Contractor. Failure to comply with this requirement may, at Thornton’s sole discretion, result in the Work or a portion of the Work being suspended until the

situation is corrected. Contractor shall not be entitled to additional compensation or Time. Should the Contractor not perform any necessary patching and maintenance in a timely manner, Thornton may, at its option, have the Work performed by others and may deduct the cost from amounts due, or that become due, to the Contractor.

**33. WATER USE**

All water used by the Contractor for testing, compaction, dust control or other uses related to construction of the Work shall be recorded by a meter furnished by Thornton, and the water shall be obtained from a location specified by Thornton which will be no more than five (5) miles from the Project site. A one thousand four hundred dollar (\$1,400) refundable deposit for meter use shall be paid by the Contractor. Water use shall be metered, but will be furnished by Thornton at no charge to the Contractor. The Contractor shall be responsible for paying a monthly water meter rental charge of forty dollars (\$40) per month. The meter is required to be returned to the City of Thornton every six (6) months for maintenance and calibration. If there are any damages to the meter and or any missing parts, the cost of repair and or replacement of parts will be deducted from the Contractor's deposit.

## **EXHIBIT E**

### **GENERAL CONDITIONS**

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**1. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE OF CLAIMS BY CONTRACTOR**

- A. The acceptance of Final Payment by the Contractor shall operate as a release of all claims by the Contractor for all things done or furnished in connection with the Agreement and for every act or omission or neglect of Thornton or others relating to, or arising out of the Agreement, except for claims previously made in writing by the Contractor and rejected and/or remaining unsettled by Thornton at the time of Final Payment.
- B. No payment, final or otherwise, shall operate to release the Contractor, its Surety or its insurers from any obligations under the Agreement or under the Performance Bond or Labor and Materials Payment Bond including, but not necessarily limited to, any one (1) or more of the following:
  - 1. Obligations arising from or relating to latent defects;
  - 2. Faulty Work or Material appearing after any payment;
  - 3. Failure of the Work to perform in accordance with the requirements of the Agreement Documents;
  - 4. Unsettled claims of Thornton;
  - 5. Claims for non-payment of laborers, mechanics, materialmen or suppliers, or for Construction Equipment used or rented; and/or
  - 6. Claims under any maintenance requirements of the Agreement Documents or any special guarantees or warranties provided for under the Agreement Documents.

**2. ACCESS AND DRAINAGE/FIRE HYDRANTS**

The Contractor shall keep a sufficient clear area around all fire hydrants to permit their full and effective use in case of fire. The Contractor shall keep natural drainage and water courses unobstructed or provide other equal courses effectively placed.

**3. ACCIDENT PREVENTION/EMERGENCY/AUTHORITY TO ACT**

Precaution shall be exercised by the Contractor at all times for the protection of all persons, Work and property, and hazardous conditions shall be guarded against or eliminated. In an emergency affecting the safety of life or property, the Contractor shall be allowed to act in a diligent manner at its discretion, without special instruction or authorization from Thornton, to prevent such threatened loss or injury, and Contractor shall so act, without appeal, if so instructed or authorized. Contractor shall notify Thornton immediately thereafter. Any compensation claimed by the Contractor on account of emergency Work affecting the safety of life or property,

other than the Contractor's Work or property, shall be determined as provided under General Conditions - Claims for Extra Cost, subject to the approval of Thornton.

#### **4. ASSIGNMENTS**

The Contractor shall not assign the whole or any part of the Agreement or any monies due or to become due thereunder without the written consent of Thornton and of the Surety on the Contractor's Bonds. A copy of the consent of the Surety, together with a copy of the assignment, shall be filed with Thornton. If the Contractor assigns all or any part of any monies due or to become due under the Agreement, the instrument of assignment shall contain a clause to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor under the Agreement shall be subject to prior claims and liens of all persons, firms, and corporations for services rendered; for the payment of all Materials and Equipment furnished; for payment of all Construction Equipment used or rented in the performance of the Work; and for the payment of any liens, claims, or amounts due federal, state, or local governments or any of their special enterprises.

#### **5. AUTHORITY AND DUTIES OF THORNTON'S REPRESENTATIVE**

- A. Thornton's Representative is placed on the Project site to observe the Work and to keep Thornton informed as to the progress of the Work and the manner in which the Work is being done; to keep records; act as liaison between the Contractor and Thornton; to call to the attention of the Contractor any Defective Work or deviations from the Agreement Documents; and to reject work. Failure of Thornton's Representative to call to the attention of the Contractor any Defective Work or deviations from the Agreement Documents shall not constitute acceptance of such Work by Thornton or relieve the Contractor of performing the Work in strict accordance with the Agreement Documents.
- B. Work that has not been given Initial Acceptance by Thornton remains in the control of the Contractor until the entirety of the Work is complete. Because Thornton's Representative cannot control how the Contractor performs the Work, the responsibility for safety and proper use shall be solely the Contractor's. Until the entirety of the Work is completed, the Contractor may do Work that changes or modifies Work previously done, and even though at any given time, a portion of Work might be well done and acceptable in quality, the responsibility for keeping it in that condition until all of the Work is complete, is the sole responsibility of the Contractor. For this reason, Thornton will not accept any portion of the Work until the entirety of the Work is complete and control of the Work is withdrawn from the Contractor by Initial Acceptance by Thornton.
- C. Because one of Thornton's Representative's primary interest is to see that the Work progresses expediently and in a Good and Workmanlike Manner, he or she may offer suggestions to the Contractor, which the Contractor may

or may not accept, at its discretion. Such suggestions are never to be considered as anything but suggestions and involve no assumption of responsibility, financial or otherwise, by either Thornton's Representative or Thornton.

- D. Any assistance which Thornton's Representative may give the Contractor will not be construed as the basis of any assumption of responsibility or liability in any manner, financial or otherwise, by Thornton's Representative or Thornton.
- E. Thornton's Representative is not and does not purport to be a safety engineer and is not engaged in that capacity by Thornton and shall have neither authority nor the responsibility to enforce safety laws, rules, regulations or procedures, nor shall he or she be responsible for the safety of persons on and about the Project site.
- F. The presence or absence of Thornton's Representative's on any project will be at the sole discretion of Thornton, and such presence or absence of Thornton's Representative will not relieve the Contractor of its sole responsibility to obtain the construction results required by the Agreement Documents.
- G. Thornton's Representative shall not be authorized to approve or accept any portion of the Work or to issue instructions contrary to the Agreement Documents. Such approvals, acceptance, or instructions, when given, must be in writing and signed by Thornton. Thornton's Representative shall have authority to reject Defective Work; however, the failure of Thornton's Representative to reject Defective Work or Work that deviates from the Agreement Documents shall not constitute acceptance of such Work by Thornton.
- H. Nothing in this section shall in any way be construed so as to require or to place responsibility for the method, manner, scheduling, coordination, or supervision of the Work upon Thornton's Representative or Thornton. Such responsibility rests solely with the Contractor.

## **6. AUTHORITY OF THORNTON**

- A. Thornton, or its consulting Engineer, shall furnish engineering services during construction of the Work to the extent provided in the Agreement Documents. Thornton or its consulting Engineer shall observe and review the Work during construction. Compliance with the Agreement Documents shall be solely the Contractor's responsibility, notwithstanding such observation, or review. Thornton may suspend the Work when it appears such suspension may be necessary to accomplish the proper implementation of the intent of the Agreement Documents.

- B. The authority to observe, review, or suspend the Work, or exercise such other authority as may be granted to Thornton by the Agreement Documents, shall not be construed or interpreted to mean supervision of construction, which is the Contractor's sole responsibility, nor make Thornton responsible for providing a safe place for the performance of work by the Contractor, its employees, Subcontractors or suppliers, or for access, visits, use, work, travel or occupancy by any other person.
- C. Thornton shall have the authority to reject any, or all Work, Materials, and Equipment which does not conform to the Agreement Documents and to decide technical questions which arise in the execution of the Work.
- D. Thornton shall make the final determination of the amount, quality, acceptability, and fitness of the several kinds of Work, including Materials and Equipment, which are to be paid for under the Agreement and shall decide all questions which may arise in relation to such Work.
- E. Thornton's decisions shall be final and conclusive, except as otherwise expressly provided. In case any question shall arise relative to the Agreement Documents, the determination of Thornton shall be a Condition Precedent to Contractor's right to receive payment for work affected by such determination.
- F. Thornton shall decide the meaning and intent of any portion of the Agreement Documents where it may be found obscure or to be in disagreement.

## **7. CERTIFICATES AND MANUFACTURER'S GUARANTEES/WARRANTIES**

Four (4) copies of any manufacturer's guaranty/warranty or certificate for any type of Material or Equipment provided shall be submitted to Thornton as a condition precedent to granting Initial Acceptance of the Work.

## **8. CHANGED OR EXTRA WORK**

- A. Thornton reserves the right, at any time during the progress of the Work, to make necessary alterations to, deviations from, additions to, or deletions from the Work, or to require the performance of Changed or Extra Work neither covered by the Drawings and Specifications nor included in the Contractor's Bid Proposal, but forming a part of the Agreement.
- B. Minor changes in the Work are changes that do not involve an adjustment in the Agreement Price and/or the Agreement Time and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Agreement Documents. Thornton shall have the authority to order minor changes that do not involve extra cost or Agreement Time and are not inconsistent with the design concept and purposes of the Work.

In the event the Contractor determines a minor change in the Work is desired, the Contractor shall promptly inform Thornton, in writing, of any such minor changes proposed to be made by the Contractor. Provided Thornton agrees in writing that such changes are minor, the Contractor may make minor changes in the Work consistent with the intent of the Agreement Documents. The Contractor shall record all such changes on the Record Drawings maintained by the Contractor.

- C. The Contractor shall not proceed with any Changed or Extra Work without a written Change Order approved in writing by Thornton. Any Changed or Extra Work performed by Contractor without written approval from Thornton shall be done solely at the Contractor's risk, and the Contractor waives any claim for additional compensation and/or extension of Agreement Time therefor.
- D. Changed or Extra Work shall in no way invalidate the Agreement or the Contractor's Bonds, but any difference in cost shall be added to or deducted from the Agreement Price, as the case may be. No anticipated profits shall be allowed on Work that is deleted. Adjustments, if any, in the Agreement Price by reason of any such Changed or Extra Work shall be determined by one (1) of the following methods in the order as listed or, if appropriate as solely determined by Thornton, by a combination of the methods listed below. Adjustments, if any, in the Agreement Time by reason of any such Changed or Extra Work shall be determined in accordance with General Conditions - Extension of Agreement Time.
1. Method A By applicable Unit Prices contained in the Contractor's Bid Proposal for the same or similar type or class of Work as determined by Thornton.
  2. Method B If applicable, Unit Prices were not included in the Contractor's Bid Proposal, then by a Unit Price proposal for the Changed or Extra Work from the Contractor that is accepted by Thornton.
  3. Method C If applicable, Unit Prices were not included in the Contractor's Bid Proposal and a Unit Price proposal is not practical or cannot be mutually agreed upon, then by a lump sum price proposal for the Changed or Extra Work from the Contractor that is accepted by Thornton.
  4. Method D If applicable, Unit Prices were not included in the Contractor's Bid Proposal, and if Thornton and the Contractor cannot mutually agree on pricing per Method B or C before Thornton requests the Contractor to begin Work on the Changed or Extra Work, then the Contractor shall be paid the "actual field cost", as

defined in paragraph H below. Each Party must notify the other Party in advance of utilizing Method D to allow each Party the opportunity to perform its due diligence during the performance of the Changed or Extra Work. Failure of the Contractor to notify Thornton in advance that it disagrees with the application of Methods A, B, or C shall bar the Contractor from unilaterally using Method D.

E. Method A – Method A is applicable to price Changed or Extra Work when the following conditions are met:

1. When the same or similar type or class of work, as determined by Thornton, is contained in the Contractor's Bid Proposal as a Pay Item;
2. When Unit Prices are provided in the Bid Proposal for the Pay Item; and
3. When the actual final quantity, after adding in the Changed or Extra Work, is not less than seventy-five percent (75%) nor greater than one hundred twenty-five percent (125%) of the total estimated quantity for the applicable Pay Item.

If condition 1. and 2. are met, but the actual final quantity is less than seventy-five percent (75%) or greater than one hundred twenty-five percent (125%) of the total estimated quantity for the applicable Pay Item, and if a larger quantity variation was expected as expressly noted on the Bid Proposal Form by an asterisk (\*), then Method A shall be used to price the Changed or Extra Work regardless of the final actual quantity installed.

If condition 1. and 2. are met, but the actual final quantity is less than seventy five percent (75%) or greater than one hundred twenty-five percent (125%) of the total estimated quantity for the applicable Pay Item, and if a larger quantity variation was not expected as expressly noted on the Bid Proposal form by an asterisk (\*), then Method B or C shall be used to price the Changed or Extra Work; provided however, that the original estimated quantity shall be paid at the original Unit Price proposed for the particular Pay Item.

F. Methods B and C – Under Methods B and C, the Contractor shall provide backup documentation showing an estimated itemized cost breakdown for labor (including labor man-hours), Materials and Equipment installed in the Work, Construction Equipment (including rental equipment) utilized in the performance of the Work, Subcontractor costs, incidental expenses, and overhead and profit Not-to-Exceed fifteen percent (15%) of the total Change Order price. Documentation shall be sufficient to enable Thornton to evaluate the Contractor's Unit Price or lump sum proposal.



G. Method D - When any Changed or Extra Work is performed under Method D, the term "actual field cost" is hereby defined to be and shall include:

1. The actual payroll cost, including payroll taxes, of all workmen such as foremen, equipment operators, carpenters, electricians, mechanics, and laborers for the time actually engaged in performing the Changed or Extra Work. No other labor related costs will be allowed including, but not limited to, Contractor's management or supervisory personnel, home office personnel, employee benefits, employee bonuses, insurance, and any other incidental costs. An allowance for these indirect costs is covered in the Contractor's allowable markup on the actual field cost, as described below;
2. The actual cost of all Materials and Equipment incorporated into the Changed or Extra Work;
3. The cost of all Construction Equipment for the time actually employed or used in the performance of the Changed or Extra Work based on the Colorado State Department of Transportation's Equipment Schedule in force on the date of the Change Order Request;
4. Transportation charges at cost necessarily incurred in connection with any Construction Equipment authorized by Thornton for use on such Changed or Extra Work, but which is not already on the Project site;
5. The actual cost of all power, fuel, lubricants, water, and similar operating expenses as well as other expendable materials such as small tools;
6. All incidental expenses incurred as a direct result of such Changed or Extra Work, including a prorata portion of premiums related to the Contractor's Bonds, and where the premiums therefore are based on payroll costs, on insurance required by the Agreement;
7. The actual cost of any subcontracted Work. In determining the amount payable to the Contractor for a Subcontractor's Work, the Contractor must either obtain a minimum of three (3) competitive firm fixed quotes for the subcontracted Work, or if using an existing Subcontractor, shall require the Subcontractor to submit documentation as required herein to determine the Subcontractor's actual field cost. If the Subcontractor's actual field cost is used to determine the Contractor's overall reimbursement for the Changed or Extra Work, the

Subcontractor's markup on its cost of Work to cover its general management and supervisory personnel, home office personnel, employee benefits, employee bonuses, insurance, taxes other than payroll taxes, any other incidental costs, overhead and profit, and all other elements of cost not embraced within the actual field cost as defined herein, shall not exceed fifteen percent (15%) of its actual field cost; and

8. The Contactor's markup on the actual field cost for self-performed work and the Contractor's markup on subcontracted work. The Contractor's markup on self-performed work may not exceed fifteen percent (15%) of the actual field cost for such work. This markup shall cover and be full compensation for the Contractor's general management and supervisory personnel, home office personnel, employee benefits, employee bonuses, insurance, taxes other than payroll taxes, any other incidental costs, overhead and profit, and all other elements of cost not embraced within the actual field cost as defined herein. The Contractor's markup on subcontracted Work shall not exceed five percent (5%) of the Subcontractor's cost whether determined by a competitive quote or by the Subcontractor's actual field cost plus its markup as defined herein, whichever is applicable. No "pyramiding" or additional percentage shall be authorized for the Contractor for any Changed or Extra Work performed by Subcontractors.

When any Changed or Extra Work is performed under Method D, Thornton shall direct the form in which the accounts of the actual field costs shall be kept by the Contractor. The Contractor must specify in writing the proposed method of doing the Work and the type and kind of Construction Equipment, if required, which shall be used in the performance of the Changed or Extra Work, and Thornton must agree in writing to the methodology before the Contractor may commence the Changed or Extra Work. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost when requested by Thornton and shall give Thornton access to accounts relating thereto.

- H. Should Thornton and the Contractor be unable to agree on the method for pricing Changed or Extra Work or on the total value of the Changed or Extra Work, Thornton may utilize any combination of Methods A, B, C, and D to develop a Change Order to facilitate the continuation of the Work and payment therefor without delay.
- I. Any Changed or Extra Work shall be considered a part of the Agreement, subject to all of its terms, conditions, stipulations, review, warranties, and tests and may be performed without notice to the Surety. The Contractor and its Surety hereby agree to these provisions.

- J. It is the Contractor's and the Surety's joint responsibility to be aware of all Agreement Change Orders and to ensure that the Agreement value under the Labor and Material Payment Bond and the Performance Bond are modified as appropriate with each Change Order. In addition, the Surety shall ensure that the Contractor's bonding limit has not been exceeded by any Agreement Change Order.

## 9. CLAIMS FOR EXTRA COST

- A. If it appears to the Contractor that Changed or Extra Work is required for which, in its opinion, it should receive additional compensation for extra costs, within ten (10) Calendar Days of when the Contractor knew or should have known of the condition giving rise to the Changed or Extra Work, the Contractor shall give written notice to Thornton's Agreement Administration Division making a Claim for Extra Cost and requesting a Change Order be authorized by Thornton for Changed or Extra Work. Contractor shall simultaneously provide a copy of said claim to Thornton's Field Representative. Should a difference of opinion arise as to what does or does not constitute Changed or Extra Work, or concerning the extra cost incurred and the payment thereof, and if Thornton insists on immediate conformance, the Contractor shall proceed with the Work after presenting its written notice to Thornton. Performance by Contractor of the Work in question shall not in any way prejudice the Contractor's ability to receive compensation on a Claim for Extra Cost. Failure to submit timely notice to Thornton as provided for herein shall constitute a complete waiver by the Contractor of its claim for extra cost for Changed or Extra Work.
- B. Provided timely notice has been filed with Thornton, and provided Method A for pricing Changed or Extra Work does not apply and provided that Thornton and the Contractor have not agreed upon pricing per Methods B and C, the Contractor shall keep an accurate account of the "actual field cost", as provided for in Method D under the General Conditions - Changed or Extra Work. The Contractor shall thereby not waive any right it might have to compensation for a Claim for Extra Cost in connection with the Changed or Extra Work. Upon receipt of the Contractor's Claim for Extra Cost, Thornton will make a final determination as to whether or not Changed or Extra Work was involved and, if so, the amount due to the Contractor.
- C. Contractor shall provide to Thornton all supporting documents and receipts in support of its Claim for Extra Cost within thirty (30) Calendar Days after performing the Work for which extra cost is claimed. Thornton shall have the right to reject any Claim for Extra Cost if the foregoing procedure is not followed. Failure to submit accurate and complete supporting documentation within thirty (30) Calendar Days after performing the Work shall constitute a complete waiver of the claim by the Contractor.

- D. In giving verbal instructions, Thornton shall have the authority to make minor changes that do not involve extra cost or Agreement Time and are not inconsistent with the design concept and purposes of the Work; but otherwise, except in an emergency endangering life or property, no Changed or Extra Work shall be performed unless pursuant to a Change Order approved by Thornton, and no Claim for Extra Cost shall be valid unless so approved, except as otherwise provided herein.

## **10. CLEANUP PRACTICES**

- A. The Contractor shall maintain general cleanup practices to keep all ROW, streets, alleys, sidewalks, and other premises as free from material and debris as the character of the Work will permit, and upon completion of any part of the Work, shall as required and or as directed by Thornton, remove all surplus material, mud, rubbish, debris, or other objectionable items and leave ROW, streets, alleys, sidewalks and other premises in a safe, acceptable condition. Under no circumstances shall the Contractor allow any condition to exist which creates a nuisance, fire hazard or an environment injurious to health or safety, or an attraction for children, animals, etc., during or after construction.
- B. In the event the Contractor fails to comply with this section, after notice has been given by Thornton, Thornton shall have the right to proceed to clean up such material and debris, make repairs, and charge the cost of the cleanup to the Contractor and to deduct the cost from any monies due or that become due to the Contractor.

## **11. CONCEALED OR UNKNOWN CONDITIONS**

- A. If conditions are encountered at the Project site which are (1) sub-surface or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, Contractor shall give written notice to Thornton promptly before such conditions are disturbed and in no event later than two (2) Business Days after its first observance of the conditions.
- B. Thornton shall promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall provide an adjustment in the Agreement Price, Agreement Time, or both. If Thornton determines that the conditions at the Project site are not materially different from those indicated in the Agreement Documents and that no change in the terms of the Agreement is justified, Thornton shall notify the Contractor in writing, stating the reasons. Any objection to Thornton's determination

must be made in writing by the Contractor, stating its reasons therefore, within ten (10) Calendar Days after Thornton has given notice of its decision.

## 12. CONSTRUCTION REVIEW/QUALITY ASSURANCE/QUALITY CONTROL TESTING

- A. During construction, the Work shall be subject to the review and observation of Thornton. The Contractor shall afford every reasonable facility and assistance to Thornton to make such review. If any Work is covered up without approval or consent of Thornton, it will be uncovered for examination by Thornton at the Contractor's expense.
- B. The fact that Thornton has a representative on the Project site shall not be taken as acceptance of the Work or any part of it. The Contractor shall notify Thornton upon completion of the entirety of the Work, and the Work shall be given final construction review by Thornton. Any Quality Control tests and Quality Control re-tests may be witnessed by Thornton or Thornton's Representative. If all parts of the Work are acceptable and comply with the Agreement Documents, Initial Acceptance shall be granted by Thornton. If parts of the Work are not acceptable and require additional work by the Contractor necessitating additional cost, such costs shall be paid for by the Contractor.
- C. Contractor shall furnish Quality Control tests and reports on Quality Control tests of all Materials and Equipment called for in the Agreement Documents. The Quality Control testing laboratory must be approved by Thornton, and the Contractor shall pay the cost of the Quality Control tests and any Quality Control re-tests that may be required, including all transportation charges.
- D. Thornton shall arrange for and conduct Quality Assurance testing at its own cost.
- E. All Quality Control and Quality Assurance tests and re-tests, unless otherwise provided in the Specifications, shall be in accordance with the pertinent sections of the latest edition of the standards applicable to the material or devices to be tested. A partial list of the principal societies referred to and their abbreviations follows:

A.A.S.H.T.O.	American Association of State Highway and Transportation Officials
A.C.I.	American Concrete Institute
A.I.S.C.	American Institute of Steel Construction
A.N.S.I.	American National Standards Institute
A.S.T.M.	American Society of Testing Materials
A.W.W.A.	American Water Work Association
C.P.I.	Clay Pipe Institute

C.S.	Commercial Standards
F.S.	Federal Specifications
N.E.C.	National Electric Code
T.M.C.A.	Tile and Marble Contractors of America

- F. All parts of the Work shall conform to the standards of construction in the Agreement Documents and to the intent thereof, and if they do not conform, shall be made to do so by rebuilding or replacing or otherwise as instructed by Thornton at Contractor's expense.
- G. If after commencement of the Work Thornton determines that any Work requires special inspection, testing or approval not otherwise provided for in the Agreement Documents, Thornton shall issue written authorization instructing the Contractor to order such special inspection, testing, or approval, and the Contractor shall give timely notice of its readiness and of the date arranged so Thornton may observe such inspecting, testing, or approval. If such special inspection or testing reveals a failure of the Work to comply with the Agreement Documents, or with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Work, the Contractor shall bear all costs of such inspection and/or testing.
- H. Required certificates of inspection, Quality Control testing results, or approval shall be secured by the Contractor and promptly delivered to Thornton.

### **13. CONTRACT IN DEFAULT – GROUNDS FOR DEFAULT**

Thornton may declare the Agreement in default for any one (1) or more of the following reasons as determined by Thornton in its sole discretion:

- A. Failure to complete the Work within a Milestone Date or the Agreement Time;
- B. Failure or refusal to comply with an instruction of Thornton within a reasonable time;
- C. Failure or refusal to remove rejected Materials or Equipment;
- D. Failure or refusal to perform any Work or to repair any Defective Work that deviates from the Agreement Document requirements;
- E. Bankruptcy, insolvency, or the making of an assignment for the benefit of creditors;
- F. Failure to provide a qualified Superintendent or sufficient and competent workmen or Subcontractors to carry on the Work in a satisfactory and Good and Workmanlike Manner;
- G. Failure to prosecute the Work in accordance with the Schedule of Work;

- H. Failure to provide proper Materials and Equipment;
- I. Failure to comply with provisions of the Agreement Documents as determined by Thornton;
- J. Disregard of laws, ordinances, rules or regulations, or any order of any public body having jurisdiction over the Work, or the violation of any construction or safety codes; and/or
- K. Multiple claims, frivolous claims, and or inflated claims.

**14. CONTRACT IN DEFAULT – PROCEDURE FOR DECLARING IN DEFAULT**

Thornton may declare the Agreement in default by giving written notice to the Contractor and its Surety. The notice shall contain the reason or reasons for declaring the Agreement in default and shall fix a day certain, not less than seven (7) Calendar Days after the date of the notice, when the Agreement shall be declared in default, unless the Contractor or its Surety remedies the default to Thornton's satisfaction or makes satisfactory arrangements with Thornton for its remedy prior to the day certain fixed in the notice. Thornton may, at its sole option, extend the day certain for declaring the Agreement in default without prejudice to Thornton's right to thereafter declare the Agreement in default. If the Contractor or its Surety fails to remedy the default or make arrangements for its remedy prior to the date set for declaring the Agreement in default, or any extension thereof, the Agreement shall be declared in default.

**15. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS**

- A. The Contractor shall provide and maintain, continually on the Project site during the performance of the Work, adequate and competent superintendence of all operations for and in connection with the Work. The Contractor shall either personally superintend its Work or shall cause it to be done by a capable Superintendent acceptable to Thornton. The Superintendent shall have the authority to see that the Work is carried out in accordance with the Agreement Documents and in a first class, thorough and Good and Workmanlike Manner in every respect.
- B. Incompetent, disorderly, intemperate, or incorrigible employees and or Subcontractors shall be removed from the Project by the Contractor when notified by Thornton, and such person shall not again be permitted to return to the Project site without the written consent of Thornton.
- C. The Contractor agrees to defend, indemnify, and hold Thornton harmless from any and all loss or damages arising out of labor disputes within the Contractor's control that occur during the performance of the Agreement.

## 16. CONTRACTOR'S RESPONSIBILITIES

- A. The Contractor agrees that the following are Contractor's responsibility under the Agreement Documents:
- B. Contractor shall supervise, inspect and direct the Work completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Agreement Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall promptly, as directed by Thornton, either correct all Defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by Thornton, remove it from the Project site and replace it with Work that is not Defective. Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including, but not limited to, all costs of repair or replacement of the work of others).
- C. The Contractor shall comply with all federal, state, county, district, and municipal laws, ordinances, rules, regulations, building codes, and safety codes relating to or applicable to the Work and shall furnish certification of compliance at completion of the Work upon request of Thornton.
- D. The Contractor shall perform all Work and furnish all Materials, Equipment, Construction Equipment, labor, transportation, superintendence, Quality Control testing, facilities, services, means, methods, techniques, insurance, bonding, and utilities, except as otherwise specified in the Agreement Documents, necessary or proper to perform and complete all Work required by and in accordance with the Agreement Documents and pay for all applicable taxes, licenses, and permits incidental to performing the Work.
- E. The Contractor alone shall be solely responsible for:
  - 1. All construction means, methods, techniques, sequences, and coordination of all Work under the Agreement Documents;
  - 2. All conditions at the Project site, including the safety of all persons and property;
  - 3. The supervision, direction, and control of all Work under the Agreement; and
  - 4. All safety procedures and precautions necessary in connection with the Work.



- F. These responsibilities of the Contractor shall apply continuously and shall not be limited to normal working hours. Review of construction by Thornton or Thornton's Representative shall not relieve the Contractor of such responsibilities.
- G. The Contractor shall furnish, erect, maintain, and remove all construction plant and all temporary works and facilities as may be required to perform the Work.
- H. The Contractor alone shall be fully responsible for the safety, efficiency, and adequacy of its Construction Equipment, Material and Equipment, facilities, and appliances, and for any damage which may result from their failure or their improper construction, maintenance, or operation.
- I. Thornton will provide Contractor with reports, Drawings, Specifications, and such other data as may be available to Thornton and reasonably required by Contractor to perform the Work. No Project information shall be disclosed by Contractor to third parties without prior written consent of Thornton or pursuant to a lawful Court Order directing such disclosure. All documents provided by Thornton to Contractor shall be returned to Thornton at the end of the Project or upon Thornton's request. Contractor is authorized by Thornton to retain copies of such documents at Contractor's expense.
- J. Regarding any electronic devices with data storage capability, including but not limited to computers and copiers, used by the Contractor in connection with the performance of Work, Contractor represents the following:
  - 1. Devices, such as copiers or fax machines, which are not intended to be a data storage device for purposes of performing the Work hereunder, shall have their data storage devices scrubbed each day, either manually or automatically, to delete any data related to Thornton's Project.
  - 2. At the time an electronic device with data storage capacity is taken out of service, all such devices will be securely scrubbed of all data related to Thornton's Project and all data storage drives will be physically destroyed prior to disposition of the device to insure no Thornton data could ever be retrieved from such device.
- K. All data, drawings, designs, plans, reports, studies, schedules, computer programs (nonproprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed for this Project by Contractor are and shall be the sole and exclusive property of Thornton. Contractor hereby transfers any copyright, trademark, or other intellectual property rights to Thornton. However, any reuse of any documents by Thornton without prior written authorization by Contractor other than for the specific intended purpose of this Agreement will be at Thornton's risk. Prior to disposal of any Project

documents, the Contractor shall provide Thornton with a ten (10) Calendar Day written notice that it has documents it intends to dispose of, during which time Thornton may take physical possession of such documents.

**17. CONTRACTOR'S UNDERSTANDING**

No verbal agreement or conversation with any officer, agent or employee of Thornton, either before or after the execution of the Agreement, shall affect or modify any of the terms, conditions, or other obligations set forth in any of the Agreement Documents. All Agreement modifications must be in writing and be in the form of a Change Order.

**18. CORRELATION OF DOCUMENTS**

A. The Drawings and Specifications are complementary and supplementary. Portions of the Work which can best be illustrated by the Drawings may not be included in the Specifications, and portions best described by the Specifications may not be depicted on the Drawings. All items necessary or incidental to completely construct or erect the Work specified shall be furnished, whether called for in the Specifications or shown on the Drawings.

B. The order of precedence of the Agreement Documents shall be as established in the Agreement. Any discrepancies between the Agreement Documents shall promptly be brought to Thornton's attention for resolution.

**19. DECISIONS OF THORNTON**

Thornton, through its duly authorized representatives, shall within a reasonable time after appropriate notice, make decisions in writing on requests, disagreements, and claims between the Contractor and Thornton.

**20. DEFINITIONS AND TERMS**

When the Agreement indicates that Work shall be "accepted, acceptable, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, interpreted, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable or unsatisfactory", it shall be understood that these expressions are followed by the words "by Thornton".

Wherever the following abbreviations, terms, or pronouns are used in any of the Agreement Documents, the intent and meaning shall be interpreted as follows:

**ABBREVIATIONS -**

AAN            American Association of Nurserymen

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute, Inc.
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association

CCA	Colorado Contractors Association
CDOT	Colorado Department of Transportation
CP	Colorado Procedure
CPSC	Consumer Products Safety Commission
CRS	Colorado Revised Statutes, 1973, as amended
CRSI	Concrete Reinforcing Steel Institute
DBIA	Design Build Institute of America
EIA	Electric Industries Association
FHWA	Federal Highway Administration Department of Transportation.
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NIST	National Institute of Standards and Technology
NSF	National Sanitation Foundation
OSHA	Occupational Safety and Health Act
SAE	Society of Automotive Engineers
UL	Underwriters Laboratories, Inc.

**ADVERTISEMENT** - A public announcement inviting Bid Proposals for work to be performed and/or Materials and Equipment to be furnished.

**AGREEMENT TIME** - The number of Calendar Days, including authorized time extensions, allowed for Substantial Completion of the Work. Where a calendar date of completion is specified, the Work shall be substantially completed on or before that date, including authorized time extensions.

**APPLICATION FOR PAYMENT** - The application submitted by Contractor for payment for Work performed during the prior pay period. May also be called Pay Request.

**BASIS OF PAYMENT** - The terms under which Work is paid for, as designated in the Agreement Documents.

**BID** - The offer of a Bidder, on the prescribed form(s), to perform the Work at the prices quoted. May also be referred to as a Bid Proposal or Proposal.

**BIDDER** - An individual, firm or corporation submitting a Bid Proposal for the Work.

**BID PROPOSAL** - The offer of a Bidder, on the prescribed form(s), to perform the Work at the prices quoted. May also be referred to as Bid or Proposal.

**BID PROPOSAL FORM** - The documents furnished by Thornton on which the offer of a Bidder is submitted.

**BID PROPOSAL GUARANTY** - The security furnished with a Bid Proposal to guaranty that the Bidder will enter into the Agreement if the Bid Proposal is accepted and an Agreement is awarded.

**BUSINESS DAY** - Monday through Friday, except for holidays observed by Thornton.

**CALENDAR DAY** - Each and every day shown on the calendar, beginning and ending at midnight.

**CERTIFIED INVOICE** - An invoice from a supplier which has been endorsed by the Contractor guaranteeing that the Material was purchased and received and establishing the value of the Material.

**CHANGE ORDER** - A written order issued to the Contractor by Thornton which covers additions, deletions, or revisions to the Work, Extra Work, and/or any adjustment to the Agreement Time and/or Agreement Price.

**CHANGED OR EXTRA WORK** - Work not provided for in the Agreement as awarded, but determined by Thornton to be essential to the satisfactory completion of the Agreement within its intended scope.

**CONDITION PRECEDENT** - An act or event that shall occur prior to the start of a subsequent act or event as defined by the Agreement Documents.

**CONSTRUCTION EQUIPMENT** - All plant, machinery, tools and apparatus, including parts and supplies for operation and maintenance, which are necessary for the proper construction and acceptable completion of the Work.

**CONTRACT DOCUMENTS** - The Contract Documents are comprised of the items listed in the Agreement. This term may be used interchangeably with the Agreement Documents.

**CONTRACT PRICE** - The monies payable by Thornton to Contractor for completion of the Work in accordance with the Contract Documents. Also may be called the Not-to-Exceed Price or the Final Negotiated Price.

**CONTRACTOR** - The Party Contracting directly with Thornton to furnish and perform all Work in accordance with the Agreement Documents.

**DEFECTIVE** - An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Agreement Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Agreement Documents, or has been damaged prior to Initial Acceptance (unless responsibility for the protection thereof has been assumed by Thornton in writing at Substantial Completion).

**DRAWINGS** - The Drawings or reproductions provided by Thornton which show the location, character, dimensions and details of the Work. May also be called Plans.

**ENGINEER** - Depending on the context, Engineer may mean the person or designated representative assigned by Thornton within the Infrastructure Department to fulfill the responsibility, duty, and authority associated with the position of City Engineer or Traffic Engineer, or Engineer may mean the consulting engineer engaged by Thornton to produce designs, drawings, and specifications for the construction of the Project.

**FINAL ACCEPTANCE** - The acknowledgment by Thornton that the Warranty Period has expired and outstanding items have been repaired to the satisfaction of Thornton and there appears to be no further outstanding items to be corrected under the Warranty.

**FINAL PAYMENT** - The final amount due to the Contractor, as may be adjusted for any verified statements of claim properly filed with Thornton, upon achieving Initial Acceptance of the Work and payable at 5:00 p.m. on the Final Settlement Date.

**FINAL SETTLEMENT DATE** - The date designated by Thornton in accordance with CRS 38-26-107, as may be amended from time to time.

**GENDER AND NUMBER** - References are made as if masculine in gender and singular in number unless neuter gender is appropriate in the context; however, the use of any gender shall be applicable to all genders and the use of singular number shall include the plural and conversely.

**GOOD AND WORKMANLIKE MANNER** - In a manner generally considered skillful by those capable of judging such Work and as compared to industry standard practices in the Denver Metropolitan Area.

**GOOD REPAIR** - A condition free from any defect, functional problems, or structural deterioration (except that from ordinary and reasonable use) which appreciably reduces the effectiveness or efficiency of the Work for the purpose intended, or any departure from the standards of original construction described in the Agreement Documents. The Contractor warrants that the Work shall be in Good Repair during the Warranty Period.

**INITIAL ACCEPTANCE** - An acknowledgment by Thornton that, to the best of Thornton's knowledge, all Work, including Punch List items, has been completed in accordance with the Agreement Documents. Initial Acceptance shall not release the Contractor of any Warranty obligations.

**LUMP SUM PRICE** - Schedule of Agreement Items and Prices, for elements of Work which are to be installed complete in place and paid as a stipulated sum for the entire element of Work. The Lump Sum Price will be a negotiated value after acceptance of the final design documents.

**MATERIALS AND/OR EQUIPMENT** - All components, articles, appliances, devices, substances, supplies, and miscellaneous items specified or required for the construction of the Work.

**MAY** - Permissive.

**METHOD OF MEASUREMENT** - The manner in which a Pay Item is measured.

**MILESTONE DATE** - A principal event specified in the Agreement Documents relating to an intermediate completion date or time prior to Substantial Completion of the entirety of the Work.

**NON-CONFORMANCE** - Not in accordance with the terms and conditions set forth in the Agreement Documents.

**NOTICE OF AWARD** - The written notice provided by Thornton to the successful Bidder awarding an Agreement for the Work.

**NOTICE TO PROCEED** - Written notice to the Contractor to proceed with the Work, including, when applicable, the date of the beginning and the end of the Agreement Time.

**OWNER** - The City of Thornton or its designated representative. May also be referred to as Thornton or the City.

**PAY ITEM** - A specifically described element of Work for which a price is agreed to in the Agreement Documents.

**PLANS** - The Drawings, or reproductions, provided by Thornton, which show the location, character, dimensions, and details of the Work. May also be called Drawings.

**PROJECT** - The overall project of which the Work may be all or only a part.

**PUNCH LIST** - The list of Work items contained in the Certificate of Substantial Completion that the Contractor is required to complete or correct prior to Thornton granting Initial Acceptance.

**QUALITY ASSURANCE TESTING** - The testing performed and paid for by Thornton to assist in evaluating whether Materials or workmanship complies with the quality requirements.

**QUALITY CONTROL TESTING** - The testing that the Contractor performs at its cost to assure that all Materials and workmanship have met the minimum standards for quality.

**RECORD DRAWINGS** - Drawings or other construction documents continuously maintained by the Contractor during the course of construction to show changes made to the original Drawings and/or Specifications. May also referred to as As-Built Drawings.

**RIGHT-OF-WAY** - A general term denoting land, property, or interest therein, acquired for or devoted to the construction of an improvement; may also be referred to as ROW.

**SALVAGEABLE MATERIAL** - Material that can be saved or salvaged.

**SAMPLES** - Physical examples furnished or constructed by the Contractor to illustrate Materials, and Equipment, workmanship or finishes, and to establish standards by which the Work will be judged.

**SCHEDULE OF WORK** - A bar chart schedule or a critical path method (CPM) schedule, as the Agreement Documents require, which graphically depicts the Contractor's plan for the performance of the Work from Notice to Proceed to Substantial Completion.

**SHALL** - Mandatory.



**SHOP DRAWINGS** - Drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or Subcontractor or sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**SPECIFICATIONS** - Those portions of the Agreement Documents, which may also be known as the Technical Specifications, consisting of the written technical descriptions of Materials and Equipment, construction systems, standards, and workmanship applicable to the Work.

**STOP WORK ORDER** - An order issued by Thornton to the Contractor to suspend Work under the Agreement; except Work necessary to assure the safety and protection of persons and property shall continue to be the responsibility of the Contractor unless otherwise directed by Thornton.

**SUBCONTRACTOR** - A party supplying labor and material, or only labor, for Work under a separate Agreement or agreement with the Contractor. Nothing contained in the Agreement Documents shall create any Contractual relationship between Thornton and any Subcontractor.

**SUBMITTALS** - Shop Drawings, Samples, diagrams, illustrations, certificates, test reports, schedules, performance charts, brochures, shop layouts, fabrication layouts, assembly layouts, foundation layouts, wiring and piping layouts, Specifications and descriptive literature, and any other submittals required by the Agreement Documents, which are prepared by the Contractor or a Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

**SUBSTANTIAL COMPLETION** - When the Work is sufficiently completed so it may be utilized by Thornton for the purposes for which it was intended, in accordance with applicable life, health, and safety codes, but excluding minor Work to be completed or corrected as Punch List Work.

**SUBSTANTIAL COMPLETION DATE** - The date on which all the Work is required to be substantially completed. May also be called Date of Substantial Completion.

**SUPERINTENDENT** - The Contractor's authorized on-site representative in charge of directing the Work.

**THORNTON'S REPRESENTATIVE** - Thornton's authorized on-site representative assigned to observe the Work.

**UNIT PRICE** - Prices as established by the Bid Proposal, Schedule of Agreement Items and Prices and/or by Change Orders for discrete elements of Work intended to be paid by multiplying the actual quantity of Work performed by the Unit Price bid or subsequently agreed upon by Change Order.

**WARRANTY PERIOD** - The period from Initial Acceptance to Final Acceptance during which the Contractor is responsible for corrections to keep the Work in Good Repair.

**WORK** - All Materials and Equipment incorporated or to be incorporated into the Work, and all labor, expendable equipment, utilities, transportation, operations and services necessary to produce the construction, including all obligations, duties, and responsibilities necessary to the successful completion of the construction of the Work in Good and Workmanlike Manner.

## **21. DISPUTE VENUE/APPLICABLE LAW/STATUTE OF LIMITATIONS**

- A. In the event of any dispute arising under the Agreement, venue shall lie in the DISPUTE District Court in and for the County of Adams, State of Colorado.
- B. The laws of the State of Colorado shall apply to any dispute, notwithstanding its choice of law principles.
- C. Any action arising out of or relating to the Agreement or the Work asserted by the Contractor against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).

## **22. DRAWINGS AND SPECIFICATIONS**

- A. After execution of the Agreement, Thornton will provide the Contractor with four (4) sets of Drawings and Specifications. If additional Drawings and Specifications are required, the Contractor can download and print the required number of documents at its expense from Thornton's on-line document posting service provider.
- B. When, in the opinion of Thornton, revised partial Plans, Drawings and/or Specifications are required to clarify or reflect Changed or Extra Work, Thornton shall provide four (4) copies of such revisions to Contractor. Additional copies shall be paid for by the Contractor. Contractor shall immediately post such revisions to the Record Drawings to be maintained by the Contractor.
- C. The Drawings and Specifications are the property of Thornton and are furnished to the Contractor solely for the construction of the Work.
- D. Data and Measurements. The data given in the Specifications and shown on the Drawings are believed to be accurate, but Thornton does not guarantee the accuracy of such data. It is the Contractor's responsibility to confirm all levels, locations and measurements, and verify all dimensions prior to construction and adapt the Work to the exact limits of construction.

Scale measurements taken from Drawings are solely for reference and must be verified by the Contractor.

**23. DRAWINGS SHOWING CHANGES DURING CONSTRUCTION (Record Drawings or As-Builts)**

Throughout construction, the Contractor shall maintain a thorough up-to-date record of all changes on the Drawings made during construction. As a condition precedent prior to granting Initial Acceptance, the Contractor shall file with Thornton one (1) set of complete reproducible red lined Record Drawings showing all changes and including Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall include, but not be limited to, the exact routing if changed from drawing location of sewer, water, gas, oxygen supply, condenser water lines, fuel oil tanks and lines, fire protection lines, and any other buried utility lines, and routing of buried electrical feeder lines and changes to routing of conduit runs which are buried or concealed in concrete slabs.

**24. EXTENSION OF AGREEMENT TIME**

- A. The Contractor expressly agrees that in undertaking to complete the Work within the Agreement Time, it has taken into consideration and made allowances in the Schedule of Work for all delays and hindrances incidental to such Work, whether growing out of delays in securing Materials and Equipment, labor, normal inclement weather, or otherwise.
- B. If the Contractor is delayed at any time in the progress of the Work by an act or omission of Thornton, any separate Contractor employed by Thornton, Changed or Extra Work, industry-wide labor strikes, fire, epidemics, quarantine restrictions, freight embargoes, unavoidable casualties, abnormal weather conditions, causes beyond the Contractor's control, or by any other cause which Thornton determines may justify the delay, the Agreement Time shall be extended for such reasonable time as Thornton may determine based on the timing and submittal requirements set forth below; provided, however, that such delay could not have been avoided by the exercise of due diligence by the Contractor.
- C. No extension of the Agreement Time will be granted for:
  - 1. Variations between an original Agreement Pay Item quantity estimate and the actual Pay Item quantity placed unless such variance exceeds one hundred twenty-five percent (125%) of the original Agreement Pay Item quantity estimate;
  - 2. Rain, snow, wind, flood, or natural phenomena of normal intensity for the locality where the Work is to be performed;
  - 3. Acts or omissions of the Contractor or its Subcontractors;

4. Delays occurring concurrently (either at the same time, on the same critical path, or on a concurrent critical path) with delays attributable to acts or omissions of the Contractor or its Subcontractors; and/or
  5. A delay occurring to an activity which is not on the then-current critical path.
- D. A request for an extension of the Agreement Time shall be submitted in writing to Thornton no later than ten (10) Calendar Days after the commencement of the delay. In the case of a continuing delay for the same cause, only one request is necessary.
- E. The Contractor shall support its request for an extension of the Agreement Time with a supplemental submittal, which shall be submitted to Thornton within fourteen (14) Calendar Days of submitting the initial request. The Contractor's supplemental submittal shall include:
1. A description of the activities that were delayed, the reasons for the delay, an explanation of how they were delayed, and a detailed factual statement relative to all relevant dates, locations, etc.;
  2. A schedule analysis (based on the critical path method) which shows in graphic form how and where a delay on the then-current critical path occurred and its effect on any Milestone Date or the Substantial Completion Date; and

An explanation of the Contractor's efforts to reschedule the Work in order to mitigate the effect of the delay and/or prevent further delays.

In the event the Contractor requires more than fourteen (14) Calendar Days to provide the supplemental submittal, the Contractor shall request in writing an extension of time from Thornton within the fourteen (14) Calendar Day period. If the supplemental submittal or a request for an extension of time to submit the supplemental submittal is not received by Thornton within the fourteen (14) Calendar Day period, the Contractor waives any claim for an extension of Agreement Time therefor.

- F. If abnormal weather conditions are the basis for a request for an extension of the Agreement Time, such request shall be supported by data substantiating that weather conditions during the period of time impacted were unusually severe and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation which shows that the weather conditions experienced in a given calendar month fall outside of the extreme ranges of weather data for the Denver area published by the National Climatic Data Center during the same calendar month over the prior ten (10) year period. The existence of abnormal weather

is not sufficient in itself to justify an extension of Agreement Time; the Contractor must still demonstrate that the abnormal weather delayed specific activities that were on the then-current critical path that controlled the overall completion of the Work.

- G. Failure to strictly comply with the timing and submittal requirements of this section shall constitute a waiver by Contractor of any request for an extension of the Agreement Time. All extensions to the Agreement Time shall be by Change Order. No oral extensions of Agreement time shall be granted by Thornton or may be relied upon by the Contractor.
- H. Notwithstanding anything to the contrary in the Agreement Documents, an extension to the Agreement Time, to the extent permitted under this section, shall be the sole and exclusive remedy of the Contractor for any delay in the commencement, prosecution, or completion of the Work; hindrance, interference, or obstruction in the Contractor's performance of the Work; loss of productivity; or other similar claims, whether or not such delays are foreseeable. In no event shall the Contractor or its Subcontractors be entitled to any compensation or recovery of any damages in connection with any delay to the Work. The Contractor hereby waives any and all claims past, present, or future for monetary damages arising out of or related to any delay or interference including, without limitation, consequential damages, lost opportunity costs, lost profits, impact damages, acceleration damages, loss of labor productivity damages, all other time related damages, or other similar remuneration against Thornton. Thornton's exercise of any of its rights or remedies under the Agreement Documents, regardless of the extent or frequency of Thornton's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

## **25. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless Thornton, its officers, agents and employees, from and against all liability, judgments, damages or losses which arise out of, result from, or are in any manner connected with the Work to be performed under this Agreement, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of Contractor, any subcontractor of Contractor, or any officer, employee or agent of Contractor, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and will pay to Thornton any expenses incurred by reason of such liability, judgments, damages or losses, including, but not limited to, court costs and reasonable attorneys' fees incurred in defending or investigating such claims. Such payments on behalf of Thornton shall be in addition to any and all other legal remedies available to Thornton and shall not be considered Thornton's exclusive remedy.

**26. LAWS, PERMITS, LICENSES, REGULATIONS, ETC.**

- A. In executing the Work, the Contractor shall comply with all applicable federal and state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over employment discrimination, wages and working conditions, and the construction of the Work including, but not limited to, all construction or building codes, OSHA requirements, and safety codes which apply to:
  - 1. Performance of the Work;
  - 2. Protection of the Project site, adjoining and/or adjacent property; and
  - 3. Maintenance of passage-ways, guard fences, or other protective facilities.
- B. The Contractor shall obtain all permits and pay for all licenses and approvals necessary for the construction of the Work and give all required notices.

**27. LIQUIDATED DAMAGES - TIME AN ESSENTIAL ELEMENT**

- A. It is mutually understood and agreed that time is an essential element of the Agreement and that it is critical that the Work progress vigorously to completion.
- B. The Contractor agrees that the Work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure Milestone Dates are met and Substantial Completion is achieved within the Agreement Time. Contractor understands that the Substantial Completion Date set forth in the Agreement Documents is a reasonable time for completion of the Work, taking into consideration the average of the preceding ten (10) years' climatic range during the specified Agreement Time based on U.S. Weather Bureau statistics for the locality where the Work is to be performed and the usual industrial conditions prevailing in that locality.
- C. If the Contractor neglects, fails or refuses to complete the Work within the Agreement Time, then for each Calendar Day after the end of the Agreement Time Substantial Completion of the Work is not achieved, the amount per Calendar Day specified in the Agreement shall be assessed by Thornton, not as a penalty, but as a predetermined and agreed upon Liquidated Damages.
- D. The amount is fixed and agreed upon by and between the Contractor and Thornton because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages Thornton would sustain in the event the Work is not completed by a Milestone Date or the Date of Substantial Completion.

- E. Thornton shall have the right to deduct Liquidated Damages from any money due, or to become due the Contractor, and to sue for and recover any additional compensation for damages for non-performance of the Agreement.
- F. The assessment of Liquidated Damages for failure to complete the Work within the Agreement Time shall not constitute a waiver of Thornton's right to collect any additional damages which Thornton may sustain by failure of the Contractor to carry out the terms of this Agreement.
- G. If Liquidated Damages for Milestone Dates are specified in the Agreement, all conditions for Liquidated Damages shall apply to each and every Milestone specified. All Milestones represent independent damages Thornton will suffer and therefore shall be viewed independently. All Milestones shall be cumulative, increasing by the amount specified for each date the Contractor does not achieve substantial completion for each specific Milestone. If the Contractor fails to obtain Substantial Completion of the Work within the Agreement Time, the Liquidated Damages for Milestone Dates shall cease to accrue and Liquidated Damages for failure to complete the Work will commence.

## **28. MATERIALS, EQUIPMENT, SUPPLIES, SERVICES, FACILITIES**

- A. It is understood that, except as otherwise specifically stated in the Agreement Documents, the Contractor shall provide and pay for all Materials and Equipment, Construction Equipment, including rental equipment, water, heat, light, fuel, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work in a Good and Workmanlike Manner within the Agreement Time.
- B. No Materials or Equipment shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale Agreement or other agreement by which an interest is retained by the seller.

## **29. NON-DISCRIMINATION**

Contractor, its agents, employees, and Subcontractors shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, gender, religion, or physical or mental disability in any policy or practice.

## **30. NOTICE AND SERVICE**

Where the manner of giving notice is not otherwise provided, notice to the Contractor from Thornton shall be in writing and considered delivered and service completed, when the notice is posted, by mail via the United States Postal Service,

to the Contractor at the address given in the Contractor's Bid Proposal, or delivered in person to the Contractor or its authorized representative on the Project site.

### **31. OPERATIONS AND STORAGE AREAS**

- A. All operations of the Contractor (including storage of Materials and Equipment) shall be confined to areas authorized by Thornton. The Contractor shall be liable for any and all damages to such premises.
- B. The Contractor shall defend, indemnify, and hold harmless Thornton from liability of any nature or kind arising from any use, trespass, or damage occasioned by its operations on the premises of third persons.
- C. The Contractor shall be responsible for the care, compliance with law, and storage of Materials or Equipment delivered to the Project site or purchased for use thereon. Stored Materials or Equipment shall be carefully and continuously protected from damage or deterioration and located so as to facilitate inspection by Thornton. The responsibility for the care and storage of Materials or Equipment shall be the Contractor's whether such Materials or Equipment are furnished by the Contractor or by Thornton. Storage of Materials or Equipment shall not unduly interfere with the progress of the Contractor's Work or the work of any other Contractor.

### **32. OR EQUAL CLAUSE**

- A. The inclusion of a manufacturer's name, trademark, or other proprietary identification of a product shall not limit competition, but shall establish a standard of quality, implying an "or equal" clause, unless expressly specified otherwise (see Special Conditions). However, the substitution of a product in place of that specified shall be permitted only upon Thornton's issuance of written approval in the form of an addendum or Change Order in response to a formal request submitted by the Contractor sufficiently in advance to allow adequate time for evaluation by Thornton. If Thornton, in its sole discretion, determines that tests are necessary for a proper evaluation, such testing shall be performed as specified by Thornton and at the Contractor's expense.
- B. The substitution of a product shall be subject, without limitation, to any requirements listed in the Special Conditions or other parts of the Agreement Documents and the following conditions:
  - 1. It is determined by Thornton that the proposed substitute product is equal or superior in properties, quality, character, and appearance to that specified;
  - 2. Such changes as may be required in the Work to install the substitute product and to properly integrate it into the Work are approved by Thornton;



3. All costs for changes due to substitutions are the responsibility of the Contractor;
4. The Contractor will provide at least the same warranty for the substitution that the Contractor would have provided for the product specified; and
5. The effect of the substitution on the total cost of the Work is approved by Thornton.

### **33. ORDER OF CONSTRUCTION**

Where Thornton's operations require specific sequencing of the Work, such sequencing requirements as provided for in the Agreement Documents shall be followed.

### **34. OVERTIME**

Any Work necessary to maintain the Schedule of Work that is considered shall be performed without additional expense to Thornton. The Contractor shall notify Thornton in writing a minimum of two (2) Business Days in advance of any overtime Work being performed.

### **35. PATENTS, COPYRIGHTS, AND ROYALTIES**

- A. The Contractor shall protect, defend, indemnify, and hold harmless Thornton and its officers, agents, servants, and employees from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by Thornton or Thornton's officers, agents, servants, or employees, unless otherwise specified in the Agreement Documents.
- B. If the Contractor uses any design, device, or Materials and Equipment covered by letters, patent or copyright, it shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that without exception, the Contractor shall pay all royalty and license fees and the Agreement Price shall include all royalties or costs arising from the use of such design, device, or Materials and Equipment in any way involved in the Work. The Contractor and/or its Surety shall defend, indemnify and hold harmless Thornton from any and all claims for design, device, or Materials and Equipment, or any trademark or copyright in connection with the Work, and shall indemnify Thornton for the cost, expense, or damage which it may be obligated to pay by reason of such infringement during the prosecution of the Work or after completion of the Work.

**36. PAYMENT FOR USE, OR OCCUPANCY OF WORK, SUBSTANTIAL COMPLETION, PUNCH LIST, FINAL PAYMENT, WARRANTY PERIOD**

- A. No progress or Final Payment, nor any partial or entire use or occupancy of the Work, nor acceptance thereof, by Thornton shall be construed to be acceptance of Defective Work or improper Materials or Equipment, either wholly or in part. The Contractor's obligation to perform and complete the Work in strict accordance with the Agreement Documents shall be absolute.
- B. When the Contractor considers the Work to be substantially complete, the Contractor shall make a written request to Thornton for the issuance of a Certificate of Substantial Completion. Thornton, upon receipt of the request, shall make an inspection of the Work and either issue a written Certificate of Substantial Completion, or deny the Contractor's request in writing and provide the reasons for such denial.
- C. In the case of a denial of the issuance of a Certificate of Substantial Completion, the Contractor shall complete the Work so as to address Thornton's concerns and comply with the Agreement Documents and shall again request in writing that Thornton issue a written Certificate of Substantial Completion. Thornton will handle any subsequent requests as outlined herein.
- D. If Thornton issues a Certificate of Substantial Completion, the Certificate shall list any items remaining to be completed as Punch List items and shall set a date certain by which the Contractor shall complete or correct the Punch List items. The date certain shall not be longer than thirty (30) Calendar Days beyond the date of the Certificate of Substantial Completion. If the Contractor does not provide in writing within four (4) Calendar Days of the issuance of the Certificate of Substantial Completion good and sufficient reasons why the Punch List Work cannot be completed by the date established in the Certificate of Substantial Completion, the date shall be as established in the Certificate and the Punch List Work shall be completed by that date. If the Contractor does provide good and sufficient reason why the Punch List Work cannot be completed by the date certain, Thornton will revoke the Certificate of Substantial Completion until such time as the Work is sufficiently complete to allow the Punch List work to be completed within thirty (30) Calendar Days from the date of Substantial Completion. If the Contractor does not complete the items on the Punch List by the date certain, Thornton, upon seven (7) Calendar Days notice, shall have the option to withhold from the Final Payment up to two (2) times the value of the uncompleted Work, to complete any uncompleted Work or repair deficient Work, and to deduct the actual cost from any amounts due or that become due to the Contractor and or to seek compensation from the Surety.

- E. Upon completion of the Punch List Work, the Contractor shall make written application to Thornton for an inspection of the Work, and Thornton will make such inspection. When Thornton finds the Work acceptable and complete under the Agreement Documents, Thornton will grant Initial Acceptance. Initial Acceptance shall not release Contractor from any Warranty obligations. The Warranty Correction Period shall begin on the Date of Initial Acceptance. Thornton will issue Initial Acceptance in writing that shall set out the beginning and end dates for the Warranty Correction Period.
- F. Upon issuance of Initial Acceptance, Thornton will, as required by CRS 38-26-107 as may be amended, establish the Date of Final Settlement and post or advertise the Notice of Contractor's Final Settlement. The Work shall be deemed completed satisfactorily and finally accepted by Thornton as those terms are used in C.R.S. § 24-91-103(1)(a) upon Initial Acceptance.
- G. Contractor shall submit a final Application for Payment upon completion of the Punch List Work. Prior to receiving Final Payment, the Contractor, if requested by Thornton, shall file with Thornton:
  - 1. Receipts showing payment in full;
  - 2. A waiver of claims and/or liens from each Subcontractor, material men, supplier, manufacturer, and dealer for all labor, Material and Equipment used or furnished by each on the Work; and
  - 3. A complete release of all claims and/or liens of the Contractor which may have arisen under the Agreement.

In lieu thereof, Thornton may request and the Contractor shall file statements showing the balance due on all accounts. The manner in which settlement is made by Thornton with the Contractor shall not release the Contractor or its Surety.

- F. The Warranty Period shall begin on the Date of Initial Acceptance. Thornton will issue Initial Acceptance in writing that shall set out the beginning and end dates for the Warranty Period.
- G. The Contractor shall be responsible for the maintenance, security, heat, utilities, damages to the Work, and insurance until the date of Initial Acceptance. In addition, the Contractor shall be responsible for the provision of maintenance, security, heat, utilities, damages to the Work, and insurance for the affected portion of the Work during any period in which the Contractor is called upon to perform Warranty Work.

### **37. PAYMENT WITHHELD**

- A. Thornton may withhold payment or, on account of subsequently discovered evidence, may nullify the whole or part of any payment certificate as may be necessary to protect Thornton from loss on account of any one (1) or more of the following:
1. Defective Work not remedied, Thornton may withhold up to two (2) times the value of the defective Work;
  2. Claims filed or notice indicating probable filing of claims of third parties against the Contractor;
  3. Failure of the Contractor to make payments to Subcontractors or to make payments for labor, Material, Equipment, Construction Equipment, or equipment rental;
  4. Reasonable doubt that the Work can be completed for the balance of the Agreement Price remaining;
  5. Damage to a Subcontractor or another Contractor;
  6. Failure or refusal of the Contractor to comply with an instruction of Thornton within a reasonable time;
  7. Unsatisfactory prosecution of the Work;
  8. Liquidated Damages assessed against the Contractor;
  9. Failure to comply with the provisions of the Agreement Documents;
  10. Being in arrears to Thornton for any amounts owed to Thornton;
  11. Failure to supply or update the Schedule of Work; and/or
  12. Damage to Thornton's property or equipment.
- B. When the above grounds are removed, payment shall be made for amounts withheld. The right to withhold payment; however, shall not preclude Thornton from its right to declare the Agreement in default for any of the reasons specified in the General Conditions – Agreement in Default.

### **38. PERSONAL LIABILITY OF THORNTON**

In carrying out any of the provisions of the Agreement or in exercising any power or authority granted thereby, there shall be no liability upon Thornton's duly authorized representatives, either personally or as officials of Thornton, it being understood that in such matters, they act as agent and representatives of Thornton.

### **39. POTENTIALLY DANGEROUS WORK**

- A. When the use of explosives, driving, or removal of piles, wrecking, excavation, or other similarly potentially dangerous activities are necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property. The Contractor shall be fully responsible for any and all damages, claims, and for the defense of any actions against Thornton resulting from such potentially damaging activity, including payment of attorneys' fees.
- B. The Contractor shall notify each public utility company or other owner of property having structures or improvements in proximity to the Project site of its intent to perform potentially dangerous activities. Such notice shall be given sufficiently in advance to enable the companies or owner's of property to take such steps as they deem necessary to relieve the Contractor of responsibility for any damages, claims, or the defense of any actions against Thornton resulting from the performance of such Work.
- C. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF", and shall be in the care of competent watchmen at all times.

### **40. PROGRESS PAYMENTS/APPLICATIONS FOR PAYMENT**

- A. When monthly progress payments are authorized, the Contractor shall, on the date established by Thornton, submit to Thornton an itemized Application for Payment, on forms provided by Thornton and supported by such data substantiating the Contractor's right to payment as Thornton may require.
- B. If payments are to be authorized on account of Materials and Equipment not incorporated in the Work, but delivered and suitably stored at the Project site, which are necessary for the orderly prosecution of the Work, the Contractor shall furnish with its Application for Payment bills of sale, bills of lading, Certified Invoices, or such other evidence as may be appropriate and satisfactory to Thornton that establishes:
  - 1. Actual cost, including transportation to the Project site, of such Materials and Equipment;
  - 2. Titles thereof in Thornton's name, upon payment; and
  - 3. Appropriate insurance coverage to protect Thornton's interest therein upon payment.
- C. The Contractor warrants that title to all Materials and Equipment covered by an Application for Payment, whether incorporated into the Work or not, shall pass to Thornton upon receipt of payment by the Contractor. The Contractor further warrants that upon submittal of an Application for

Payment for Work for which payment has been received from Thornton, shall to the best of the Contractor's knowledge, information, and belief, be free and clear of all liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, Materials or Equipment relating to the Work; and that such Materials or Equipment furnished or installed comply with the requirements of the Agreement Documents.

- D. The passing of title to Thornton shall not be construed as relieving the Contractor of the sole and complete responsibility for:
1. The care and protection of the Work, Materials and Equipment for which payment has been made; and
  2. The restoration of any damaged or destroyed Work, Materials or Equipment. Such responsibility shall continue until all Work under the Agreement has been completed and accepted by Thornton.
- E. Thornton shall make progress payments on account of the Agreement Price on the basis of Contractor's Application for Payment and shall make payment to Contractor within thirty (30) Calendar Days after the Application for Payment is approved by Thornton. All such payments will be measured by the Schedule of Values established in the Agreement Documents (and in the case of Unit Price Work based on the number of units completed) or in the event there is no Schedule of Values, as provided in the Special Conditions.
- F. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, less the aggregate of payments previously made and less such amounts as Thornton is entitled to withhold in accordance with General Conditions - Payment Withheld:
1. Ninety-five percent (95%) of the Work completed (with the balance being retainage). Thornton may determine that as long as the character and progress of the Work remain satisfactory to it, no additional retainage will be withheld.
  2. Ninety-five percent (95%) (with the balance being retainage) of Materials and Equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to Thornton as provided by the Agreement Documents.
- G. Under no circumstances shall payment constitute a waiver of Thornton's right to require the Contractor to fulfill all of the requirements of the Agreement Documents.

## **41. PROTECTION OF PERSONS**

A. The Contractor shall:

1. At all times protect the lives and health of its employees and Subcontractors;
2. Take all necessary precautions for the safety of all persons on or in the vicinity of the Project site; and
3. Comply with all applicable federal, state, county, and municipal safety laws and codes.

B. Contractor shall comply with all provisions of the "Williams Steiger Occupational Safety and Health Act of 1970" (OSHA), including any amendments thereto and rules and regulations issued pursuant thereto, applicable to the Work and performance of the Agreement. Whereas the state in which the Work is performed has passed legislation bearing on Occupational Safety and Health, such legislation and amendments thereto, together with rules and regulations issued pursuant thereto shall be complied with by the Contractor.

## **42. PROTECTION OF PROPERTY**

A. The Contractor, at no additional expense to Thornton, shall at all times:

1. Safely guard Thornton's property and abutting or adjacent property from injury, loss, or damage;
2. Protect by false work, braces, shoring or other effective means all buildings, foundations, walls, fences, and other property along his line of Work, or affected directly by its Work, including, but not limited to, Thornton's property, against damage;
3. Cover or otherwise protect stockpiles of Materials to avoid damage to the Materials and damage to any property from such Materials; and
4. Repair, replace, or make good any such damage, loss or injury, unless caused directly by Thornton.

B. The Contractor shall exercise care to protect from injury all water lines, sanitary sewer lines, gas mains, telephone cables, electric cables, services pipes, and other utilities or fixtures which may be encountered during the Work. All utilities and other service facilities or fixtures, if damaged, shall be repaired by the Contractor at its sole expense.

- C. The Contractor, at no additional expense to Thornton, shall at all times safely guard and protect the Work; provide, erect, and maintain suitable barriers around all excavations or obstructions to prevent accidents; and provide, place, and maintain during the night sufficient lights, signals, and signs for this purpose on or near the Work. The Contractor shall at all times, until Initial Acceptance, protect the Work, Equipment and Material from accidental or any other damage and repair any damage at no cost to Thornton.

**43. QUALITY OF MATERIALS**

In the absence of detailed Specifications, all Materials and Equipment shall conform to the latest standards of the American Society for Testing Materials (ASTM) available at the time the Invitation for Bids is issued, unless otherwise indicated.

**44. REFERENCE TO STANDARD SPECIFICATIONS**

Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specification or specifications available at the time the Invitation for Bids is issued, unless otherwise indicated.

**45. REMEDY OF DEFECTS, THORNTON'S RIGHT TO CORRECT**

If, in the opinion of Thornton, a defect exists, or functional or structural deterioration takes place, or substantial departure from the standards of original construction exists in the Work, Thornton shall notify the Contractor by letter sent via the United States Postal Service to the address given in the Contractor's Proposal. If the Contractor does not proceed within seven (7) Calendar Days of the date of the notice, to remedy such defects, deficiencies, deterioration or departures, or the Contractor's remedies are not adequate as determined by Thornton, Thornton may cause the repairs to be made as Thornton deems appropriate, and the cost shall be paid by the Contractor or its Surety or deducted from amounts due or that become due the Contractor.

**46. RIGHT-OF-ENTRY**

Contractor shall provide to Thornton, Thornton's Representative and representatives of federal, state, county, district and municipal governments complete and free access to the Work, whenever access is requested by Thornton.

**47. RIGHT OF THORNTON TO TERMINATE THE AGREEMENT**

Should it appear at any time that the Work is not being prosecuted to insure completion of the Work by a Milestone Date or within the Agreement Time, and if upon seven (7) Calendar Days written notice to the Contractor, the Contractor fails to increase the quality or the quantity of the Work, or both, Thornton shall have the right to terminate the Agreement and complete the Work as it deems appropriate. The Contractor shall not be entitled to any damages on account of such termination, and will be held liable for all costs and expenses incurred by Thornton in completing



the Work. All money due the Contractor will be retained until the Work is completed and all expenses and costs have been deducted, and any money due Thornton shall be paid by the Contractor or its Surety.

**48. RIGHT-OF-WAY**

Thornton will furnish land and ROW as shown in the Agreement Documents for the performance of the Work. Contractor shall confine its operations to the ROW furnished.

**49. SANITARY CONVENIENCES**

The Contractor shall furnish the necessary sanitary conveniences, properly secluded, for the use of workers during construction, and these conveniences shall be maintained in a manner that will be inoffensive and in compliance with federal, state, and local health and sanitation requirements.

**50. SECURITY - AGREEMENT**

- A. The Contractor shall furnish two (2) separate surety bonds (in the form attached), each in an amount at least equal to one hundred percent (100%) of the Agreement Price as security for the following:
  - 1. The faithful performance of the Agreement and the terms, conditions, and stipulations contained therein; and
  - 2. Payment of all laborers and mechanics for labor performed and payment for all Materials and Equipment furnished and for all Construction Equipment used or rented in the performance of the Agreement.
- B. The Surety on such bonds shall be satisfactory to Thornton, shall be a duly authorized surety company licensed to do business in the State of Colorado, shall appear in the latest Federal Register Circular 570 as published by the Department of the Treasury, unless otherwise approved by Thornton, and shall have no less than a Best's A Rating. The Surety will in no way be financially associated with the Contractor.
- C. Any and all bonds shall be written as to make the Agreement Documents a part thereof, whether by reference or attachment, in order to give the Surety full notice of the conditions therein.
- D. The Contractor shall within ten (10) Calendar Days from and including the date of Notice of Award, furnish Thornton with the required "Performance Bond" and "Labor and Materials Payment Bond", each in a sum equal to one hundred percent (100%) of the Agreement Price.

- E. If at any time a Surety shall become insolvent, is declared bankrupt, loses its right to do business in the state in which the Work is to be performed, or is no longer listed in Department of the Treasury Circular 570, Contractor shall within ten (10) Calendar Days after notice from Thornton, substitute acceptable bonds in such form and sum and signed by such other Sureties satisfactory to Thornton.

## **51. SEPARATE AGREEMENTS**

- A. Thornton reserves the right to let other Agreements in connection with the Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials, machinery, equipment, supplies and the execution of their work, and shall properly connect and coordinate its Work with theirs.
- B. If any part of the Contractor's Work depends upon the work of any other Contractor for proper execution or results, the Contractor shall inspect and promptly report in writing to Thornton any lack of progress or defects in the other Contractor's work that render it unsuitable for proper execution or results. Failure on the part of the Contractor to inspect and report shall constitute acceptance of the other Contractor's work as fit and proper for the reception of the Contractor's Work. No extensions to the Agreement Time will be granted if the Contractor fails to inspect and report on unsuitable work.
- C. To insure the proper execution of subsequent Work, the Contractor shall measure existing Work and shall at once report in writing to Thornton any incompatibility between the existing Work and the subsequent Work anticipated by the Agreement Documents.

## **52. SEVERABILITY CLAUSE**

The provisions of this Agreement shall be deemed to be severable, and if any term, phrase, or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties.

## **53. SUBCONTRACTING**

- A. The Contractor may utilize where appropriate the services of Subcontractors on parts of the Work.
- B. The Contractor shall not award any Work to a Subcontractor if Thornton objects.
- C. Thornton encourages all Contractors to utilize minority, disadvantaged, and women-owned businesses whenever possible.

- D. The Contractor shall be as fully responsible to Thornton for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them or under their control, as it is for the acts and omissions of itself and of persons directly employed by it.
- E. The Contractor shall cause appropriate provisions to be inserted in all subcontracts binding Subcontractors to the Contractor as Contractor is bound to Thornton.
- F. Nothing contained in the Agreement Documents shall create any contractual relationship between any Subcontractor and Thornton.

**54. SUBMITTALS, SHOP DRAWINGS, SAMPLES, SERVICE PARTS MANUALS, AND OPERATOR'S INSTRUCTIONS**

- A. Within fourteen (60) Calendar Days from Notice of Award, the Contractor shall submit an edited Submittal Log (provided in the Technical Specifications) which for each required Submittal, indicates the Contractor's proposed submittal date and the time allotted for Thornton's or its representative's, review and approval of each Submittal if sooner than specified. This Submittal Log shall be consistent with the Contractor's Schedule of Work. The Contractor shall thoroughly review the Submittal Log to insure that all of the Project submittal requirements are listed and in the appropriate order of operations for their proposed construction schedule.
- B. The Contractor shall furnish all Submittals and Samples which are specified or required by the Contract Documents for the completion of the Work. All Shop Drawing and Sample Submittals shall be submitted to Thornton in electronic format whenever possible. When electronic Submittals are not possible, a minimum of four (4) copies of the Submittal shall be provided. Shop Drawings of Material and Equipment offered by the Contractor for approval by Thornton shall be in sufficient detail to adequately show construction and operation. Shop Drawings and Samples submitted as herein provided by the Contractor and approved by Thornton for conformance with the design concept shall be executed in conformity with the Agreement Documents, unless otherwise required by Thornton.
- C. Work performed in connection with the purchase, fabrication, manufacture, shipment, installation, or erection of Material or Equipment prior to Thornton's review and approval, as specified herein, shall be at the Contractor's sole risk, responsibility, and expense.
- D. Shop Drawing and Sample Submittals shall be accompanied by a letter of transmittal which shall list Submittal numbers and dates of the Submittal and shall be in the form required by Thornton. Shop Drawings shall be complete in every respect and bound in sets. Any resubmittals shall show

Submittal and resubmittal numbers as well as the dates for previous Submittals and resubmittals.

- E. The Contractor shall submit all Shop Drawings and Samples sufficiently in advance of construction to allow ample time for checking, correcting, resubmitting, rechecking, and approving to avoid any delay in the progress of the Work.
- F. Shop Drawings or Samples submitted shall be marked with the name of the Project, and Submittal number, and bear the stamp or specific written indication of approval of the Contractor as evidence that the Shop Drawings and Samples have been checked by the Contractor. Any Shop Drawings or Samples submitted without the Contractor's stamp of approval or specific written indication of approval shall not be considered by Thornton and shall be returned to the Contractor for approval and resubmission.
- G. At the time of each Submittal, the Contractor shall give Thornton notice of each variation between the Shop Drawing or Sample and the requirements of the Agreement Documents. The Contractor shall place a specific notation on the Shop Drawing or Sample and call such variation to Thornton's attention in the Contractor's letter of transmittal. If the variation as submitted is acceptable, Thornton will provide written approval of the variation to the Contractor. Thornton's review and approval of Shop Drawings or Samples shall not relieve the Contractor from responsibility for strict compliance with the requirements of the Agreement Documents, unless the Contractor has, in writing, called Thornton's attention to each variation at the time of submission, as required above, and Thornton has given unconditional written approval of each variation to Contractor. Thornton's review and approval of any variation shall not extend to means, methods, techniques, sequences, or procedures of the construction of the Work or to safety precautions or programs incident thereto.
- H. By approving and submitting Shop Drawings and Samples, the Contractor represents that:
  - 1. It has determined and verified all field dimensions and measurements, quantities of Work, field construction criteria and installation requirements, Materials and Equipment, catalog numbers, and similar data;
  - 2. It has checked, and coordinated such submittals with the requirements of the Work and the Agreement Documents; and
  - 3. Data shown on the Shop Drawings are complete and accurate.
- I. All items of standard equipment shall be the latest model at time of delivery.

- J. When Shop Drawings are submitted for the purpose of showing the installation in greater detail, their approval shall not excuse the Contractor from requirements shown on the Drawings and Specifications.
- K. Shop Drawing and Sample Submittals not conforming to the above requirements shall be returned to the Contractor, without action by Thornton, for resubmittal. Any resulting delay shall be the responsibility of the Contractor.
- L. Thornton's review and approval of Shop Drawings and Samples submitted by the Contractor shall be only for general conformance with the design concept, as otherwise provided, and shall not be construed as:
  - 1. Permitting any departure from the Agreement Documents;
  - 2. Relieving the Contractor of the responsibility for any error in details, dimensions, or otherwise that may exist in such Submittals;
  - 3. Constituting a blanket approval of dimensions, quantities, or details of the Material or Equipment shown; or lubrication drawings showing type and frequency of lubrication. Detailed parts drawings shall show location, name, and catalog numbers of parts;
  - 4. Approving departures from additional details or instructions previously furnished by Thornton. Such check or approval shall not relieve the Contractor of the full responsibility of meeting all of the requirements of the Agreement Documents.
- M. Four (4) sets of bound Operator's Instructions and electric copy shall be furnished by the Contractor for Equipment furnished under the Agreement that is specially listed or that is considered to be of a special or complex nature. Operator's Instructions shall include detailed manufacturer's information on all operations and maintenance recommendations.
- N. Four (4) sets each of bound Service Parts Manuals and an electric copy shall be furnished by the Contractor for all items of standard manufacture.
- O. All Operator Instructions and Service Parts Manuals shall be bound in permanent binders satisfactory to Thornton and shall be furnished to Thornton as a condition precedent to granting Initial Acceptance.

## **55. SUSPENSION OF WORK BY THORNTON**

Thornton shall have the right to suspend and reinstate execution of the whole or any part of the Work without invalidating the provisions of the Agreement for such period or periods of time as Thornton may deem necessary due to unsuitable weather or such other conditions considered unfavorable for the suitable prosecution of the

Work, including failure of the Contractor to supply labor, Materials or Equipment meeting the requirements of the Agreement Documents, or failure to carry out instructions or to perform such other provisions of the Agreement considered unfavorable for the orderly or suitable prosecution of the Work. During periods of suspension, the Contractor shall protect the Work from damage. Stop Work Orders for suspension of the Work and orders to reinstate performance of the Work shall be issued by Thornton to the Contractor in writing. If the Stop Work Order was issued due to Contractor's, Subcontractor's, and or supplier's non-compliance with the Agreement, the Contractor shall, upon approval by Thornton, perform Work necessary to bring the Work back into compliance with the Agreement. During such a suspension period the Contractor shall not be entitled to any compensation as a result of the suspension, including compensation for delay. The Agreement Time shall continue to run during such suspension period and the Contractor shall remain fully responsible for any liquidated damages that are assessed as a result of late performance.

## **56. TAXES**

- A. Contractor shall pay all sales, consumer, use, or other similar taxes required to be paid in accordance with the laws and regulations applicable to the Work. Thornton is exempt from Colorado State and City of Thornton sales and use taxes on Materials and Equipment to be permanently incorporated into the Work. Said taxes shall not be included in the Contractor's Bid Proposal or the Agreement Price.
- B. Contractor shall apply to the Colorado Department of Revenue for an exemption certificate and purchase the Materials and Equipment tax free (Section 39-26-104, C.R.S. as amended). Contractor shall be liable for exempt taxes paid due to the failure to apply for exemption certificates or failure to use them.

## **57. TERMINATION FOR CONVENIENCE**

- A. Termination Notice - Thornton may terminate the Agreement, in whole or in part, for convenience if termination is in Thornton's best interest. Agreement termination will be initiated by a written Agreement Termination Notice to the Contractor which will specify the effective date of the termination.
- B. Canceled Commitments - The Contractor, after receiving the Agreement Termination Notice, shall cancel any outstanding commitments for procurement of Materials and Equipment. In addition, the Contractor shall use reasonable efforts to cancel or divert any outstanding subcontracted commitments, unless otherwise requested by Thornton. With respect to such canceled commitments the Contractor shall:

1. Settle all outstanding liabilities and all claims arising out of the canceled commitments. Such settlements shall be approved by Thornton and shall be final; and
  2. Assign to Thornton all of the rights, title, and interest of the Contractor under the terminated orders and subcontracts, as directed by Thornton. Thornton will then have the right to settle or pay any or all claims arising out of the termination of these commitments.
- C. Termination Claim - The Contractor shall submit its termination claim to Thornton within ninety (90) Calendar Days after the effective date of the Agreement Termination Notice. During the ninety (90) Calendar Day period, the Contractor may make a written request to Thornton for a time extension in preparing the claim. Any time extension must be approved by Thornton. If the Contractor fails to submit its termination claim within the time allowed, Thornton may determine the amount due the Contractor, if any, by reason of the termination, which determination shall be final. Failure of the Contractor to submit a termination claim within the time allowed shall constitute a waiver of the claim.
- D. Payment - Subject to paragraph C above, the Contractor and Thornton may agree upon the whole or any part of the amount to be paid the Contractor as a result of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has proven reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Change Order, and the Contractor shall be paid that amount. Where applicable, payments claimed pursuant to termination shall be based on Unit Prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed Work is to the total lump sum item. Where Work performed is of a nature that it is impossible to separate the costs of uncompleted Work from completed Work, the Contractor shall be paid the actual cost incurred for the necessary preparatory Work and other Work completed. The Contractor shall not be entitled to profit or overhead on uncompleted Work.
- E. Disposition of Work and Inventory - The Contractor shall transfer title and deliver to Thornton, such items which, if the Agreement had been completed, would have been furnished to Thornton including:
1. Completed and partially completed Work; and
  2. Materials or Equipment produced, acquired, or in the process of being produced that is terminated by the notice.

Other than the above, any termination inventory resulting from the termination may, with written approval of Thornton, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by Thornton. The proceeds of any such disposition shall be applied to reduce any payments owed to the Contractor, or shall be credited to the cost of Work, or paid in a manner as directed by Thornton. Until final disposition, the Contractor shall protect and preserve all Material and Equipment which is in its possession and in which Thornton has or may have an interest.

- F. Cost Records - The Contractor agrees to make cost records available to the extent they are necessary to determine the validity and amount of each item in the termination claim.
- G. Contractual Responsibilities - Termination of an Agreement, or portion thereof, shall not relieve the Contractor of Contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any claim arising out of Work performed.

#### **58. THORNTON'S REMEDIES CUMULATIVE; NONWAIVER**

No right or remedy conferred upon or reserved to Thornton by the Agreement shall be considered exclusive of any other remedy or Contractual right, but the same shall be distinct, separate, and cumulative, and shall be in addition to every other remedy existing at law or in equity or by statute; and every remedy given by the Agreement to Thornton may be exercised from time to time as often as the occasion may arise, or as may be deemed expedient. No delay or omission on the part of Thornton to exercise any right or remedy arising from any default on the part of the Contractor shall impair such right or remedy or shall be construed to be a waiver of any such default or an acquiescence thereto, or otherwise affect the right of Thornton to enforce the same in the event of any subsequent breach or default by the Contractor.

#### **59. USE OR OCCUPANCY OF COMPLETED PORTIONS**

- A. Thornton shall have the right to take possession of, use, or occupy any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work or any portions, may, or may not, have expired. Such taking possession, use or occupancy shall not be deemed an acceptance of any Work until all Work has been completed in accordance with the Agreement Documents.
- B. If partial use or occupancy increases the cost, or delays the Work, the Contractor shall be entitled to an adjustment to the Agreement Price, Agreement Time, or both, as Thornton may determine.
- C. Consent of the Surety and endorsement from the insurance carrier or carriers permitting occupancy or use of any completed or partially completed portions of the Work by Thornton shall be secured by the Contractor.



**60. VARIATION FROM ESTIMATED PAY ITEM QUANTITIES**

On Agreements with Unit Prices, the Contractor may reasonably expect variations in the estimated quantity for any given Pay Item such that the actual quantity installed may range from seventy-five percent (75%) to one hundred twenty-five percent (125%) of the estimated quantity, unless a larger variation is stipulated on the Bid Proposal form. The Contractor shall not be allowed any claims for anticipated profits, for lost profits, or for any damages because of a difference between the estimated quantity for a Pay Item and the actual quantity for the Pay Item, or for the elimination or reduction of a Pay Item quantity as may be required to bring the cost of the Work within the limits of available funds or to reduce the Scope of the Work for any reason.

**61. WARRANTY AS TO WORKMANSHIP, MATERIALS AND EQUIPMENT**

- A. In addition to other promises and warranties contained herein, the Contractor warrants to Thornton that the Materials and Equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Agreement Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered Defective. This warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.
- B. Contractor further warrants to Thornton that competent laborers, mechanics, and tradesmen shall be used on the Work. Experienced manufacturer's representatives shall be used to supervise the installation of Equipment, as may be required by Thornton. Any special tools or construction equipment which may be required shall be provided by the Contractor.
- C. Neither the final certificate of payment nor any provision in the Agreement Documents, nor partial or entire occupancy of the premises by Thornton, shall constitute acceptance of Work not done in accordance with the Agreement Documents or relieve the Contractor of liability in respect to any expressed or implied warranties or responsibility for faulty Materials, Equipment or workmanship. This Warranty will have no time limit except as prescribed by law.

**62. WARRANTY PERIOD**

- A. The Contractor agrees to keep all Work in Good Repair for a period of one (1) year from the date of Initial Acceptance, unless a longer period is specified in the Agreement Documents. Upon written notice from Thornton to the Contractor of any aspect of the Work found by Thornton not to be in Good Repair, the Work shall be promptly repaired by the Contractor. Such repair,

including any consequential damages resulting from the defect to be repaired, shall be made without further cost to Thornton.

- B. If the Contractor does not proceed to remedy such defects, deficiencies, deteriorations, or departures called to its attention within seven (7) Calendar Days after mailing of the notice and diligently pursue such repairs, Thornton may cause the repairs to be made as Thornton deems best and the cost shall be paid by the Contractor or its Surety.
- C. The obligations of the Contractor provided in this section shall be in addition to and not in limitation of any obligations imposed upon by it by any special guaranty or warranty required by the Agreement Documents or otherwise prescribed by law.

**63. WEATHER**

During weather unsuitable for the proper execution of the Work in a first-class manner, all Work affected by such condition shall be properly protected from weather-related damage.

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## EXHIBIT D

### LABOR AND MATERIAL PAYMENT BOND

The **City of Thornton**, a home rule municipality, located at 9500 Civic Center Drive, Thornton, Colorado 80229 (“Thornton” or “Obligee”) and \_\_\_\_\_ (“Contractor”), having an office at \_\_\_\_\_ have entered into a General Service Agreement dated \_\_\_\_\_ for design and construction services (the “Agreement”) in connection with the CDBG Loma Linda Park Rehabilitation, Project No. 24-46 (the “Project”).

By virtue of this Bond, Contractor as Principal, and

\_\_\_\_\_  
**(Surety’s full name)**

having an office at \_\_\_\_\_

\_\_\_\_\_  
**(Surety’s address)** (“Surety”) as Surety, are firmly bound to Thornton, for the benefit of Claimants, in the amount of \_\_\_\_\_ Dollars (\$XXXXXXXX.XX). Claimants means, without limitation, an individual or entity contracting directly with Contractor or with a subcontractor or subconsultant of Contractor to furnish labor and materials for use in the performance of the Agreement, and also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or state statute against Contractor for the Project.

Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, to pay for labor, materials and equipment furnished by Claimants for the performance of Agreement CDBG Loma Linda Park Rehabilitation, Project No. 24-46, for the specified Work.

#### I. BOND TERMS

- A. The Agreement by this reference is incorporated into this Labor and Material Payment Bond.
- B. Surety waives notice of any change made by Thornton, including changes of time, to the Agreement or to related subcontracts or subcontracts, purchase orders and other obligations.
- C. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds Thornton harmless for claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Agreement, Surety shall have no further obligations under this Bond. If Contractor fails to promptly make payment of all sums due to Claimants, Contractor’s, and Surety’s obligations under this Bond shall remain in full force and effect, and be subject to the following:

1. Claimants that directly Agreement with Principal, or with a subcontractor of the Principal, for labor and materials or a combination of both used or reasonably required for use in the performance of the Agreement. Labor and materials include without limitation all and any part of water, gas, power, light, heat, oil, gasoline, equipment, telephone service or rental equipment used in the Agreement, and, if applicable, architectural and engineering services required for performance of the Work or Services by Contractor and its subcontractors or subconsultants, and all other items that may be subject to filing a claim under this Bond.
2. Principal and Surety jointly and severally agree that every Claimant, who has not been paid in full before the expiration of ninety (90) Calendar Days after the date on which the last Claimant's labor was performed, or furnished materials, may sue on this Bond, prosecute the suit to final judgment, and execute it to recover any and all sums due to Claimant. Thornton shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced by any Claimant:
  - a. Until Claimant, other than a Claimant that directly Agreements with the Principal, has given written notice to Principal, Thornton, and Surety, within ninety (90) Calendar Days after Claimant last performed Work or Services or labor, or furnished materials. The notice for which the claim is made, must state with substantial accuracy the amount claimed, and the name of the party to whom the materials were furnished, or for whom the labor was performed. Notice shall be delivered by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Thornton and Surety, at the place where an office is regularly maintained for the transaction of business, or it may be served in any manner by which legal process is served in the state where the Project is located, however, service need not be made by a public officer;
  - b. After the expiration of six (6) months from the date Principal stopped performing the Work or Services pursuant to the Agreement. It is understood that if any time limitation embodied in this Bond is prohibited by law controlling such limitation, this Bond shall be deemed amended to equal the minimum period of time limitation as such law permits;
  - c. Other than in a state court of competent jurisdiction in, and for the county or other political subdivision of the state where the Project, or any part of it is situated, or in the United States District Court of the District where the Project, or any part it is situated, and no other place.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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## EXHIBIT E

### PERFORMANCE BOND

The **City of Thornton**, a home rule municipality, located at 9500 Civic Center Drive, Thornton, Colorado 80229 (“Thornton” or “Obligee”) and \_\_\_\_\_ (“Contractor”), having an office at \_\_\_\_\_ have entered into a General Service Agreement dated \_\_\_\_\_ for design and construction services (the “Agreement”) in connection with the CDBG Loma Linda Park Rehabilitation, Project No. 24-46 (the “Project”).

By virtue of this Bond, Contractor as Principal, and \_\_\_\_\_  
(**Surety’s full name**) having an office at \_\_\_\_\_

(**Surety’s address**) (“Surety”) as Surety, are firmly bound to Thornton, for the maximum amount of \$ \_\_\_\_\_ Dollars (\$XXXXXXXXXX) (the "Bond Sum").

Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, to Obligee for the performance of the Work or Services this Project requires and Thornton authorized

#### I. BOND TERMS

- A. The Agreement by this reference is incorporated into this Performance Bond.
- B. If Contractor performs its Agreement obligations as required, Surety shall have no further obligations under this Bond. If Contractor does not perform the Work or Services, Surety's and Contractor’s obligations under this Bond shall remain in full force and effect.
- C. Surety waives notice of any change made by Thornton, including changes of time, to the Agreement or to related subcontracts or subcontracts, purchase orders and other obligations.
- D. If Contractor is in default on the Agreement, and Thornton has performed its obligations under the Agreement, Surety shall promptly, and at Surety's expense, take one (1) of the following actions:
  - 1. Surety may promptly remedy the default;
  - 2. Surety shall promptly:
    - a. With Thornton’s consent, complete the Agreement in accordance with its terms and conditions using its agents or independent Contractors;

- b. Obtain one or more bids from lowest, qualified Contractors acceptable to Thornton to complete the Agreement in accordance with its terms and conditions;
- c. Arrange for a Contractor, acceptable to Thornton, to complete the Work or Services in accordance with its terms and conditions of the Agreement and secured by performance and payment bonds issued by a qualified surety. Surety will ensure sufficient funds are available to pay the cost to complete all the Work or Services as it progresses, and other costs and damages Surety may be liable to pay, minus the balance of the Agreement price, up to the Bond Sum indicated in the first paragraph of this Performance Bond. The term, "balance of the Agreement price," as used in this subsection c, means the total amount payable by Thornton to Contractor under the Agreement and any Agreement Change Orders less the amount properly paid by Thornton to Contractor.

## II. ADDITIONAL TERMS

- A. **Duration.** This obligation will run continuously and will remain in full force and effect unless and until the Bond is terminated and cancelled as provided in the contract or as otherwise provided by law.
- B. **Bond Venue.**
  - 1. The venue for any action, dispute or proceeding initiated in connection with this Bond will be District Court in and for the County of Adams, State of Colorado.
  - 2. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Agreement falls due.
- C. **No Other Beneficiaries.** No right of action shall accrue on this Bond to or for the use of any person or corporation other than Thornton.
- D. **Severability.** If one or more of the provisions of this Bond are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions will remain effective.



Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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## ***EXHIBIT F***

### **STANDARD CONCRETE SPECIFICATIONS**

#### **City of Thornton**

This specification represents Thornton's minimum standards in regard to installation, movement, cracking, finish, replacement requirements, and overall appearance of concrete flatwork. This specification is not a complete specification, but is intended to supplement Project specific specifications. In the event of a conflict between this specification and any other project or nationally recognized specification including, but not limited to, ADA, AASTHO, COT standards, and CDOT standards, the more stringent specification shall apply.

This specification is applicable for exterior flatwork including, but not limited to, sidewalk, curb and gutter, cross pans, handicap ramps, and general exterior flatwork such as plazas. This specification is not applicable to bus pads, railroad crossings, or road pavements.

The following minimum standards shall apply to all Work performed. Any concrete not within these minimum standards shall be replaced or, in Thornton's sole discretion, ground smooth. The Contractor shall perform all repair or replacement Work at no cost to Thornton.

A. Deviation from Design Slope

Deviation from design slope in any direction shall not exceed plus or minus 0.25%. Notwithstanding the foregoing, in no case shall deviation from design slope cause water to pond.

B. Surface Tolerance within Design Slope

1. Deviation of Pavement in Longitudinal Direction:

Except at curb and gutter transitions to inlets, the gap below a 10' straightedge resting longitudinally on high spots shall not exceed 1/4". On tangent roadway alignments and curves with greater than 1,000', and on sharp vertical curves and horizontal curves with radius of 1,000' or less. The total maximum allowable deflection shall be 0.25" from the edge of the straightedge with allowance made for curve deflection. Should the length of the longitudinal segment or segments being measured not accommodate a 10' straightedge, a shorter straightedge shall be used and the allowable gap shall be proportioned accordingly.

2. Deviation of Pavement in Transverse Direction:

The gap below a 10' straightedge resting on high spots shall not exceed  $\frac{1}{4}$ ". Should the width of the transverse direction being measured not accommodate a 10' straightedge, a shorter straightedge shall be used and the allowable gap shall be proportioned accordingly.

3. Deviation in Surface Tolerance of Ramps, Sidewalks, Curb and Gutter, and Intersection Cross Pans:

In any direction, the gap below a 10' straightedge resting on high spots shall not exceed  $\frac{1}{4}$ ". Should the length of the direction being measured not accommodate a 10' straightedge, a shorter straightedge shall be used and the allowable gap shall be proportioned accordingly.

C. Movement of ramps, sidewalks, curb and gutter, and intersection crosspan occurring after placement, but before the end of the Warranty Period:

1. Lateral, (horizontal) movement shall not exceed  $\frac{1}{4}$ " from original approved lines.
2. Differential settlement or heaving, in any direction, within a monolithic segment or between adjacent segments separated by a control joint, expansion joint, or construction joint, shall not exceed  $\frac{1}{4}$ " in any 10' length.

Any concrete not within the  $\frac{1}{4}$ " tolerance shall be replaced or ground smooth at Thornton's sole option, by the Contractor at no cost to Thornton. Notwithstanding the above, any settlement or heaving that causes water to pond shall be cause to remove and replace, or with Thornton's approval to grind the concrete, to restore proper drainage.

D. Cracks

All concrete shall be installed with tooled or saw cut control joints meeting requirements of the Project specifications and/or Thornton standards. Joints at construction joints shall be tooled. Joints shall be tooled or cut while concrete is still green and prior to the appearance of any shrinkage cracks and shall be made to a depth of at least  $\frac{1}{4}$ " of the total thickness of the concrete. Cracks of any size, width, or length that do not fall within the width of the tooled or saw cut control joint are not acceptable. All concrete panels or segments with cracks not within the tooled or saw cut joints shall be replaced by the Contractor at no cost to Thornton.

E. Damaged Concrete

All chipped, scratched, grooved, spalled, pitted, honeycombed, vandalized, or concrete damaged in any way shall be replaced by the Contractor at no additional cost to Thornton.

## F. Surface Finish

1. The Contractor shall screed, float, and trowel smooth all concrete prior to final finish. The surface finish of all concrete shall be uniform, even, level, and esthetically pleasing as shall be determined by Thornton. The quality of the surface finish shall be equivalent to that routinely achievable by a highly competent concrete finisher comparable to a journeyman skill level.
2. All concrete flatwork shall have light broom finish unless otherwise specified. The broom grooves shall be straight to a tolerance of 1/2" maximum lateral deviation (1/4" either side of a straight edge) in any 5' length and not more than 1/16" in depth. The Contractor shall clean the broom between each pass so that broom finish is clean, consistent, and esthetically pleasing. If concrete finish becomes rough, uneven, deeply grooved, or in any way visually unpleasing in the sole opinion of Thornton, the Contractor shall replace the affected panels at no cost to Thornton.

## G. Replacement of all Defective Concrete

All replaced concrete shall be uniformly tied into the existing concrete on each side of the replaced concrete section and shall adhere to all specifications and tolerances. Removal of concrete for replacement shall be to the nearest existing control joint, construction joint, or expansion joint in either direction, or if prior approval is obtained from Thornton, to a new saw cut joint; provided however, no resulting sidewalk or curb and gutter segments shall be less than 5' from control joint to control joint in length. All edges shall be saw cut cleanly with no chips or spalling in existing concrete to remain. Saw cut edges shall be parallel and perpendicular to the existing work. Saw cut joints shall not over cut into existing material to remain. Should any concrete become chipped, cracked, or damaged in any way during removal, the Contractor shall remove and replace this damaged concrete back to the next control joint at no additional cost to Thornton. Curb and gutter replacement and segments shall be tied to existing curb and gutter on each side of the replaced segment with two (2) dowels (#4 rebar x 2' long), one (1) placed under the gutter section and one (1) placed under the curb section of the repair. These dowels will be epoxy anchored into the existing curb and gutter by means of drilling horizontally a 1' long hole with a diameter as recommended by the epoxy manufacturer for #4 rebar and anchoring the dowels in the hole using Hilti HY-150 or approved equal epoxy adhesive. The remaining 1' of the dowel will be embedded in the replacement curb and gutter section. The dowels will be evenly spaced in the pan section of the curb and gutter so as to provide a minimum of 2 1/2" of concrete cover on all sides.

## H. Curing and Weather Protection

All concrete shall be cured and protected from the weather per Project specifications or per Thornton Standard Specifications sections 607 and 608, whichever is more stringent.

# EXHIBIT G EXAMPLE PAYROLL FORM

**U.S. Department of Labor**  
Wage and Hour Division

**PAYROLL**

For contractor's optional use; see instructions at [dol.gov/agencies/whd/forms/wh347](http://dol.gov/agencies/whd/forms/wh347)



*Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.*

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No. 1235-0008 Expires 09/30/2026
PAYROLL NO. <input type="text"/>	FOR WEEK ENDING <input type="text"/>	PROJECT AND LOCATION <input type="text"/>
		PROJECT OR CONTRACT NO. <input type="text"/>

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING RESUMPTIONS	(3) WORK CLASSIFICATION	O R S	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
				MON	TUE	WED	THUR	FRI	SAT	SUN									
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)

Date   
 I,    
 (Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by  on the  (Contractor or Subcontractor) ; that during the payroll period commencing on the  (Building or Work)  day of , , and ending the  day of ,  all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said  (Contractor or Subcontractor) from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357, 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
<input type="text"/>	<input type="text"/>

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.

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### VIII. EXHIBIT 3

## REFERENCE AUTHORIZATION AND RELEASE FORM

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

Proposing Firm has submitted a sealed proposal to the City of Thornton (Thornton) for CDBG Loma Linda Park Rehabilitation, Project No. 24-46 (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



## EXHIBIT 4 QUESTIONNAIRE FORM

1. Is proposing firm confident and capable of meeting the schedule deadlines outlined with RFP? Yes/No
  
2. Has proposing firm made themselves abreast of all the most recent federal requirements for project and are prepared to meet them on project? Yes/No
  
3. Do all proposed materials meet Build America, Buy America requirements? Yes/No.
  
4. Can all Materials be procured and installed by the deadline date of May 31, 2024? Yes/No
  
5. Is a schedule of required activities attached to the proposal including critical approval dates needed for ordering of equipment and/or materials? Yes/No
  - a. On the lines below, please list any critical dates that Thornton should be aware of (i.e. approval of submittals needed to meet schedule requirements).

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6. Complete the following tables with base contract pricing and additional unit costs:

**Base Contract Pricing Table:**

Vendors submitting a proposal shall provide pricing in the table below with the sum of all items to equal a Total cost of \$300,000.

Item	Units	Quantity	Cost/Unit	Cost
Design/Admin	LS	1		
Demo/Required Site Repairs	LS	1		
Installation of proposed new play equipment & site improvements	LS	1		
Bond Costs	LS	1		

**Total Cost      \$300,000**



**Table of Unit Costs:**

Vendors shall provide unit pricing that will be used as the basis for change orders if additional work is needed not identified in the design/established requirements. Note, quantities listed are those included with the base contract pricing for reference only.

<b>Item</b>	<b>Units</b>	<b>Quantity</b>	<b>Cost/Unit</b>	<b>Total Cost</b>
<b>Demo – concrete walk – 6”</b>	<b>SF</b>	<b>252</b>		
<b>Concrete walk – new 6”</b>	<b>SF</b>	<b>252</b>		
<b>Base Course – 6”</b>	<b>SF</b>	<b>252</b>		
<b>Trip hazards – cut/grind high edges &lt;2”</b> <b>Average length 6’</b>	<b>EA</b>	<b>30</b>		
<b>Demo – bollards – 15” diam., 18”H</b>	<b>EA</b>	<b>16</b>		
<b>Vinyl Concrete – 15” diam., 6” depth</b>	<b>EA</b>	<b>16</b>		
<b>Sawn Top Boulders – 2’x4’x26”</b>	<b>EA</b>	<b>8</b>		
<b>Prep and Paint Bike Racks</b>	<b>EA</b>	<b>2</b>		

## **Appendix A**

### **REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS**

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- VIII. Certification Regarding Use of Contract Funds for Lobbying
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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 subrecipients 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.
1. 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.

## Appendix B

### ***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](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](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_lrl)

**OMB Circular** - [http://www.whitehouse.gov/omb/circulars\\_default/](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>

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## Appendix C Wage determination

"General Decision Number: CO20240002 01/05/2024

Superseded General Decision Number: CO20230002

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

### HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

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If the contract is entered	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay
option is exercised) on or	all covered workers at
after January 30, 2022:	least \$17.20 per hour (or

		the applicable wage rate
		listed on this wage
		determination, if it is
		higher) for all hours
		spent performing on the
		contract in 2024.
		_____

		Executive Order 13658
		generally applies to the
		contract.
		. The contractor must pay
		covered workers at least
		\$12.90 per hour (or the
		applicable wage rate
		on this wage
		if it is higher) for all
		hours spent performing on
		that contract in 2024.
		_____

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for

performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024

ASBE0028-001 03/01/2022

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 32.98	15.47

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BRCO0007-004 01/01/2023

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 34.18	10.86

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BRCO0007-006 05/01/2023

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 31.89	13.70

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 -----  
 ELEC0012-011 09/01/2023

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 31.90	14.96

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 ELEC0068-001 06/01/2023

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
 JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 43.20	18.38

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 ELEC0111-001 09/01/2023

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 24.61	21.25%+7.40
Line Equipment Operator.....	\$ 39.77	21.25%+7.40
Lineman and Welder.....	\$ 55.22	24.25%+7.40

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 -----  
 ELEC0111-007 06/01/2019

MESA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

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 -----  
 ELEC0113-002 06/01/2023

EL PASO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 35.70	17.52

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ENGI0009-001 05/01/2023

	Rates	Fringes
Power equipment operators:		
Blade: Finish.....	\$ 34.58	14.25
Blade: Rough.....	\$ 34.05	14.25
Bulldozer.....	\$ 34.05	14.25
Cranes: 50 tons and under..	\$ 34.77	14.25
Cranes: 51 to 90 tons.....	\$ 35.07	14.25
Cranes: 91 to 140 tons.....	\$ 36.27	14.25
Cranes: 141 tons and over...	\$ 38.63	14.25
Forklift.....	\$ 33.62	14.25
Mechanic.....	\$ 34.58	14.25
Oiler.....	\$ 33.19	14.25
Scraper: Single bowl under 40 cubic yards.....	\$ 34.21	14.25
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls.....	\$ 34.41	14.25
Trackhoe.....	\$ 34.21	14.25

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IRON0024-003 11/01/2023

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 37.23	22.84
Structural		

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LABO0086-001 05/01/2009

	Rates	Fringes
Laborers:		
Pipelayer.....	\$ 18.68	6.78



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PLUM0003-005 06/01/2023

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 48.23	19.77

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-----  
PLUM0058-002 07/01/2023

EL PASO COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 43.90	16.83

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-----  
PLUM0058-008 07/01/2023

PUEBLO COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 43.90	16.83

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-----  
PLUM0145-002 07/01/2023

MESA COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 37.57	14.93

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PLUM0208-004 06/02/2023  
  
ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,  
JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PIPEFITTER.....	\$ 44.56	19.72
-----		
-----		
SHEE0009-002 07/01/2023		

	Rates	Fringes
Sheet metal worker.....	\$ 38.47	20.83
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-----		
TEAM0455-002 07/01/2023		

	Rates	Fringes
Truck drivers:		
Pickup.....	\$ 25.46	4.77
Tandem/Semi and Water.....	\$ 26.09	4.77
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-----		
SUCO2001-006 12/20/2001		

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	
Carpenters:		
Form Building and Setting...\$	16.97 **	2.74
All Other Work.....\$	15.14 **	3.37
Cement Mason/Concrete Finisher...\$	17.31	2.85
IRONWORKER, REINFORCING.....\$	18.83	3.90
Laborers:		
Common.....\$	11.22 **	2.92
Flagger.....\$	8.91 **	3.80
Landscape.....\$	12.56 **	3.21
Painters:		
Brush, Roller & Spray.....\$	15.81 **	3.26

Power equipment operators:

Backhoe.....	\$ 16.36 **	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37 **	4.41

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is

like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates

the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"



**Appendix D BENESCH ADA REPORT**  
(Provided under separate Cover)



**APPENDIX E**  
**2024 Playground Renovations Plan**  
(Provided under separate Cover)