

## Request for Quotation (RFQ)

### RFQ No. 317-24 Shopping Cart Retrieval

#### SCHEDULE OF EVENTS

• RFQ Issued	06/18/24		
• Deadline to Submit Additional Questions	06/24/24	11 P.M.	Local Time
• Response to Written Questions	06/26/24	11 P.M.	
• RFQ Due Date	06/28/24	11 P.M.	Local Time

#### General Information:

The City of Thornton (Thornton) is requesting Quotations for the Procurement for a qualified Service Provider to collect abandoned shopping carts from public property and private properties that are accessible to the public within the Thornton city limits which have been reported by Thornton staff or residents.

#### Buyer Contact Information:

The contact information from the City's Purchasing Office for this solicitation is as follows:

**Buyer: Nykeba Klein, Purchasing Analyst**

**Email: [Nykeba.Klein@ThorntonCO.gov](mailto:Nykeba.Klein@ThorntonCO.gov)**

Note: Communications with anyone other than the Purchasing Division during the solicitation may result in rejection of your Quotation. All questions, comments, and submissions regarding this Request for Quotation (RFQ) shall be addressed to the Buyer, not to the end user.

#### Current State:

Thornton is experiencing a vast number of abandoned shopping carts throughout the city. Thornton is looking for a Service Provider to retrieve and return carts to Retail establishments across Thornton.

#### Background:

Thornton City Code 38-391, section 38-393 includes abandoned shopping carts as an enumerated nuisance, and added a new Division 5 to Chapter 38, Article X of the Thornton City Code concerning abandoned shopping carts. Thornton requires a Service Provider to bring properties into compliance with Thornton's City Code 38-393.

**Scope of Work:**

Thornton requires that all shopping cart owners that own, possess, control or operate a retail establishment in the city or whose shopping carts become abandoned shopping carts in the city, regardless of whether the owner owns, possesses, or operates a retail establishment in the city to adhere to City Code requirements pertaining to abandoned shopping carts. Examples of code requirements include, but are not limited to, the following:

1. Provide for the prompt retrieval of abandoned shopping carts to owners to promote public health, safety, and welfare, and improve the aesthetic appearance of the city, to comply with City Code.
2. Encourage owners of shopping carts to deter, prevent and mitigate the removal of shopping carts from the premises of retail establishments and require owners to retrieve any shopping carts that were removed despite these efforts.
3. Mitigate the accumulation of abandoned shopping carts on public and private properties.

**Requirements:**

Under this Agreement, the Service Provider shall return abandoned shopping carts at least once (1) per week or as directed by Thornton's Representative directly to the owner's retail establishment. If the retail establishment is part of a chain business, the Service Provider shall return abandoned shopping carts to the closest location of the chain business's retail establishment in the city. Service Provider shall bring private and public property into compliance with Thornton's City Code as directed by Thornton. The services shall result in properties with an overall appearance of aesthetic quality and care with attention given to every detail of the abandoned shopping cart retrieval and return program.

Service Provider shall be responsible for the following:

1. Provide a toll-free phone number to report abandoned shopping carts;
2. Provide a website to report abandoned shopping carts. For carts reported through the website, Service Provider will provide an email confirmation that the report has been received.
3. Collect carts at minimum one (1) day per week in Thornton city limits. Collection day(s) will be directed by Thornton's Representative and may be required more frequently or on-call as-needed. If the Service Provider does not or is unable to complete collection on certain days (e.g., Saturday, Sunday, observed holidays), it shall provide a list of those days to Thornton's Representative.

4. Required photographs. Service Provider must supply a **MINIMUM** of three (3) color photographs per shopping cart. One (1) must be taken before the Services are started, one (1) during the performance of the Service, and one (1) after the Service is completed. The date and time the photographs were taken must be displayed on each photograph. The “Before”, “During”, and “After” photos must be taken from approximately the same vantage point of the Service area.
  - a. Photographs must be supplied in electronic jpg format at a resolution that provides a clear, sharp (not grainy) image when printed a normal size of 4”x6”. The electronic file format must be viewable by any standard Microsoft photo viewer software package.
5. Collect abandoned shopping carts that are empty, as well as carts that may have litter, trash, or debris in them. If carts have debris in them, the Service Provider will place debris from carts in a plastic bag and securely tie the bag shut so debris does not blow out of the collection vehicle while transporting carts and debris. Service Provider is not required to and will not retrieve carts that clearly hold personal possessions. In those situations, Service Provider will report the location of the cart to a designated Thornton contact for assistance. Thornton may provide Service Provider with the opportunity to dispose of debris from carts at no cost.
6. Collect usable abandoned shopping carts as well as carts which are dirty, damaged, dented, in disrepair, and/or otherwise unusable;
7. Return abandoned shopping carts to retail establishments or otherwise dispose of carts that are not usable. Thornton may provide a location for recycling of metal carts at no cost to Service Provider;
8. Keep records of number of carts collected, owners of such carts, and date and location collected and photographs;
  - a. Obtain receipts signed by or on behalf of shopping cart owners listing the number of abandoned shopping carts returned to the owner and the date of delivery.
9. Provide month-end report to support invoice charges, including number of abandoned shopping carts collected by week/day, locations where carts are collected, owners of carts collected, photographs of the location and cart and disposition of carts collected;

10. Within 3 working days of request, provide Thornton with a list of retail establishments that directly contract with Service Provider for abandoned shopping cart retrieval services in Thornton and verify if a retail establishment is not contracted for collection;
11. Provide monthly invoices detailing charges, with accompanying backup to verify charges.
  - a. Service Provider will invoice to Thornton directly, after which time Thornton will bill the Retail establishments under City Code Compliance.
  - b. Provide any other information that Thornton's Representative deems reasonably necessary to obtain in relation to Service Provider's abandoned shopping cart retrieval services performed under this Agreement.

**Communication:**

Service Provider shall provide the following:

1. An e-mail address to receive and confirm receipt of records of number of carts collected, owners of such carts, date and location of carts and all photographic documentation to enable prompt transmission of documents between Service Provider and Thornton staff;
2. A telephone answering service or pager, or telephone answering machine for routine verbal communication;
3. A primary phone number which is promptly answered during normal working hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Service Provider's observed holidays;
  - a. A mobile phone number for Service Provider's work crew supervisor(s). The work crew supervisor's mobile phone number may be used as the primary phone number, provided it is answered every workday regardless of whether the supervisor is at work or not.

**Supervision:**

At least one (1) person on the Service Provider's on-site work crew shall be in a supervisory role, shall be trained and experienced in the necessary supervisory skills, shall speak, read, and write English fluently, shall be present at all times during progress of the Services, and shall be responsible for the direction of labor and equipment on the work site. The person assigned to the supervisory role during performance of the Service must be listed in Exhibit "A" as a supervisor and shall be available by cellular/mobile phone during normal work hours as defined herein.

**Safety and Hazardous Conditions:**

Service Provider shall notify Thornton's Code Compliance Office immediately if unsafe and/or hazardous conditions exist. The Service Provider's employees and equipment shall comply with all applicable provisions of the Colorado Occupational Safety and Health Act throughout the duration of the specified Services. Thornton, its officers, employees, and agents are not responsible for injury or damage to any of the Service Provider's personnel or equipment in the performance of the Services.

**Appropriate Care of Persons and Property:**

Service Provider shall be responsible for maintaining all areas in a neat and orderly manner. Service Provider shall be responsible for protecting persons and property in the performance of their Services.

Thornton, its officers, employees, and agents are not responsible for injury to third parties or damage to property owned by third parties caused by Service Provider's equipment or personnel in the performance of Services.

**Additional Resources:**

If additional resources are needed, Service Provider shall be responsible for promptly obtaining the additional resources as necessary. If Service Provider cannot supply the necessary resources in a timely fashion, Thornton's Code Compliance Office has the authority and option at its sole discretion to call additional resources to complete the task.

**F.O.B. Point:**

Various locations around the City of Thornton.

**Proposal Submission:**

This Request for Quotations (RFQ) has been posted publicly to the following locations:

- BidNet® Direct: [www.BidNetDirect.com](http://www.BidNetDirect.com)
- Thornton's Purchasing website: <https://solicitations.thorntonco.gov/solicitations>

Thornton currently uses BidNet Direct® and its own website to distribute official records for all copies of publicly posted proposals for viewing. Both websites operate as a free to view and download option for prospective Vendors

**Submission of Quotations:**

Submission of proposals for this solicitation may be done electronically through a Vendor portal (currently done via BidNet Direct®). Proposals can be submitted at [www.bidnetdirect.com](http://www.bidnetdirect.com), but shall not be completely submitted later than the date and time indicated in the Schedule of Events.

If you experience problems with BidNet Direct®, please call 1-800-835-4603 for assistance. There is no charge by BidNet Direct® for this service.

Proposing Vendors who are unable to submit a proposal through BidNet®, may request to submit a physical copy of their proposal for consideration. A proposing Vendor shall email the Purchasing Analyst of Record prior to the question due date listed in the Schedule of Events for instructions on where and how to submit their physical proposal. All physical proposal submissions shall be submitted and recorded no later than the date and time dictated in the Schedule of Events.

**Pricing and Instructions:**

All prices shall be firm and fixed until an award has been made by Thornton. If extended unit pricing does not match total bid price, then unit pricing shall govern final evaluation amount. No changes to price shall be acceptable without first written authorization by the Contract and Purchasing Division.

**Award Length:**

The award from this RFQ shall be on an “all or none” basis.

The goal of this RFQ is to establish a multi-year purchasing avenue with the awarded Vendor. The initial term of this award shall be from the date of award through December 31, 2025. After the initial term expires, there will be an opportunity for a mutually agreed upon annual renewal of up to **five (5)** years.

All future years’ usage and renewals by Thornton shall be contingent upon annual appropriations by Thornton’s City Council. Thornton shall not be liable for any future charges from the awarded Vendor should funding not be appropriated by City Council. No further extensions or renewals shall pass this date for service from the awarded Vendor, unless otherwise previously authorized in writing by the Thornton Purchasing Division.

Upon notice of award, the Thornton Purchasing Division shall issue a Vendor Commitment Statement (“VCS”) to the awarded Vendor(s) that memorializes the scope of work from this solicitation, along with the Vendor’s awarded pricing. This VCS will be sent to the awarded Vendor for signature to finalize the award.

## **Annual Pricing Updates**

Upon each annual renewal of term, the Vendor may request a price adjustment for the following year. Price adjustment requests are to be made by the Vendor in writing (e.g., email) to the Thornton Purchasing Division, no later than sixty (60) Calendar Days prior to the renewal date or year in which the adjustment may take effect. Should the Vendor fail to submit a request for a price adjustment to Thornton's Purchasing Division, then the current pricing shall remain in effect for the following renewal period.

All price adjustments shall be based upon the Denver-Aurora-Lakewood consumer price index (CPI) and are subject to review and approval by Thornton's Purchasing Division.

A link to this index at the time of this RFQ has been provided below.

[https://data.bls.gov/pdq/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUURS48BSA0,CUUSS48BSA0](https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS48BSA0,CUUSS48BSA0)

## **Basis of Award:**

Award shall be made to the responsive, responsible, Bidder meeting the specifications and having the lowest possible cost consistent with the quality and service needed for effective use. The following is a list of the criteria that may be used in determining the Award:

- A. Responsiveness to the terms and conditions of the RFQ;
- B. Responsibility of the Bidder;
- C. Adherence to specifications and/or Scope of Services;
- D. Delivery and/or completion time;
- E. Guarantees and warranties;
- F. Prices quoted;
- G. Local vendor consideration; and/or
- H. Overall cost effectiveness and greatest benefit as deemed in the best interest of Thornton.

Thornton-based businesses may be granted consideration in evaluation of price quotes if they meet the following criteria:

- A. The business maintains an office, manufacturing, training, retail, or repair facility within Thornton city limits;
- B. The business has a current Thornton business license;
- C. The business is current on all Thornton obligations; and
- D. The Bidder requests the consideration on the Bid Proposal Form and supplies the necessary documentation.

All nonmonetary bid criteria being equal, Thornton business' price quotes will be discounted for the purpose of evaluating the quotes when compared to non-Thornton-based businesses by the lesser of five percent (5%) of the price quote or ten thousand dollars (\$10,000).

### **Cooperative Purchasing:**

Thornton encourages the proper use of cooperative purchasing and reserves the right to make results of this solicitation available to other governmental agencies seeking like equipment, goods, or services. Other agencies using this solicitation must do so according to regulations established by their individual organizations and accept sole responsibility for its use. The terms and conditions of any resulting transaction shall be exclusively between the buyer and the seller. Buyers and sellers using this solicitation in a cooperative or "piggy-back" fashion, agree to defend and hold harmless Thornton from any dispute or action arising from its use.

### **Invoicing Requirements**

Thornton's Accounts Payable Division is the only division within Thornton that issues payments to Vendors whom have submitted invoices. Thornton only issues payments from invoices and will not issue payments to Vendors off of quotes.

The Vendor should be capable of providing invoices that include the following details:

- Invoice number;
- Invoice date;
- Itemized charges, including unit of measurement;
- Total charge;
- Service date(s) or service period;
- Blanket PO number (will be provided annually to awarded Vendor);
- Service location (Building name and address); and
- A completed report including the assessment.

Vendor shall also provide monthly statement billing (as required).

Service Provider's completed report including the Assessment shall constitute the invoice for payment.

Thornton's standard payment terms are net thirty (30) Calendar Days after receipt of an invoice. All invoices submitted shall be emailed to [AP.Invoices@ThorntonCO.gov](mailto:AP.Invoices@ThorntonCO.gov). In lieu of email, physical copies may be submitted to City of Thornton – Accounts Payable, 9500 Civic Center Drive, Thornton, CO 80229-4326. Invoices sent to anyone other than Accounts Payable are not considered to be properly submitted and will not be paid until they are properly submitted.

**Standard Proposal Considerations:**

Thornton maintains a standard set of RFQ considerations and terms and conditions for RFQs that are non-federally funded and are not through a cooperative awarded process. These considerations are static between each RFQ process. It is the sole responsibility of the proposing Vendor to have read all RFQ considerations. A copy of these standard RFQ considerations has been uploaded with this RFQ document as a separate cover.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

**EXHIBIT "A"****SERVICE PROVIDER'S PERSONNEL AND  
SUBCONTRACTORS LISTING****PERSONNEL**Employee Name:Role/Job Title:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**SUPERVISOR**Name:Phone Numbers:

_____	_____
_____	_____
_____	_____
_____	_____

(Please use additional sheets if necessary.)

**Quotation Form****(All Quotations must be submitted on this form)**

**Note to Vendors:** Unless listed as a separate line item, all pricing provided shall be considered as a delivered price. Both pricing and delivery time will be taken into consideration when evaluating this bid.

	<b><u>DESCRIPTION</u></b>	<b><u>EXTENDED PRICE</u></b>
1.	Price per week for retrieval	\$ _____
2.	Other Flat Fees Per Month (if any)	\$ _____

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

**ACCEPTANCE OF CONDITIONS AND ADDENDA ACKNOWLEDGEMENT FORM**

Vendor indicates acceptance of the following conditions:

1. City of Thornton Charter Section 7.4 prohibits Thornton from issuing a Purchase Order to firms which employ certain family members of employees unless the Thornton Council determines it is in Thornton's best interest. For the purposes of this Charter Section, a domestic partner shall be considered equivalent to a family member. The Vendor attests to the following:

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 Invitation for Bid, except as follows: (list, if any) \_\_\_\_\_

2. The undersigned Vendor, having examined the Bid Documents, and having full knowledge of the product requested and described herein, hereby proposes that it will fulfill the obligations contained herein in accordance with all terms, conditions, and specifications set forth, and that it will furnish all required products and pay all incidental costs, all in strict conformity with these Bid Documents, for the stated prices as payment in full.

3. I acknowledge receipt of any and all published addenda: Yes  No

4. My firm is claiming the Thornton Based Business Local Vendor Consideration: Yes  No

Proposing Vendor's Name: \_\_\_\_\_

Vendor Representative (Printed): \_\_\_\_\_

Vendor Representative (Signature): \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

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

284-24  
Shopping Cart Retrieval**City of Thornton Purchase Order Terms and Conditions:****Acceptance**

Acceptance of work on the goods or services subject to this Purchase Order or shipment of such goods, whichever occurs first, shall be deemed acceptance of this Purchase Order. Any acceptance of this Purchase Order is limited to the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Vendor to vary, in any degree, any of the terms of this Purchase Order is hereby rejected. Vendor shall notify Thornton in writing within ten (10) business days if Vendor is unable to comply with any of the Purchase Order terms and conditions.

**Termination for Convenience by Thornton**

Thornton reserves the right to terminate this Purchase Order, or any part hereof, for its convenience. In the event of such termination, Vendor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease work. Vendor shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of value earned prior to the notice of termination, plus actual direct costs resulting from the termination, if any. Vendor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. Vendor shall not be entitled to profit or overhead on unperformed work.

**Termination for Cause**

Thornton may terminate this Purchase Order, or any part hereof, for cause in the event of a default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to this Purchase Order, or failure to provide Thornton, upon request, of reasonable assurances of future performance, shall all be cause allowing Thornton to terminate this Purchase Order for cause. In the event of termination for cause, Vendor shall be liable to Thornton for any and all damages sustained by reason of the default which gave rise to the termination.

**Setoff**

All claims for money due, or that become due, to Vendor from Thornton shall be subject to deduction or setoff by Thornton in reason of any claim arising out of this Purchase Order or any other transaction with Vendor.

**Proprietary Information, Confidentiality, Advertising**

Vendor shall consider all information furnished by Thornton to be confidential and shall not disclose such information to any other person, nor use such information in any way other than that required to perform this Purchase Order, unless Vendor obtains written permission from Thornton to do so. This paragraph shall apply to all drawings, specifications, or other documents prepared by Vendor for Thornton in connection with this Purchase Order. Vendor shall not advertise or publish the fact that Thornton has contacted to purchase goods or services from Vendor, nor shall any information relating to this Purchase Order be disclosed without Thornton's written permission. Unless otherwise agreed in writing, no financial or technical information disclosed in any manner or at any time by Vendor to Thornton shall be deemed secret or confidential, and Vendor shall have no rights against Thornton with respect thereto, except such rights as may exist under patent laws.

**Warranty**

Vendor expressly warrants that all goods or services furnished under this Purchase Order shall conform to all specifications and applicable standards, will be new manufacture unless otherwise specified, and will be free from defects in material and workmanship. Vendor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services; and that any goods will be adequately contained, packaged, marked and labeled. Vendor warrants that all goods or services furnished hereunder will be merchantable, will be safe and appropriate for the purpose for which goods or services of this kind are normally used, and will conform in all respects to samples. If Vendor knew or has reason to know the particular purpose for which Thornton intends to use the goods or services, Vendor warrants that such goods or services will be fit for such particular purpose. Inspections, tests, acceptance or use of the goods or services furnished hereunder shall not affect Vendor's obligation under this warranty, and such warranties shall survive any inspections, tests, acceptance, and use. Vendor's warranty shall run to Thornton, its successors, assigns, and customers, and users of products sold by Thornton. Vendor agrees to promptly replace or correct defects in any goods or services not conforming to the foregoing warranty without expense to Thornton when notified of such nonconformity by Thornton, provided Thornton elects to provide Vendor with the opportunity to do so. In the event of failure of Vendor to promptly correct defects in or to replace non-conforming goods or services, Thornton, after reasonable notice to Vendor, may make such corrections or replace such goods and services and charge Vendor for the cost incurred by Thornton in doing so.

**Price Warranty**

Vendor warrants that the prices for the goods or services sold to Thornton under this Purchase Order are not less favorable than those currently negotiated to any other customer for the same or similar goods or services in similar quantities. In the event Vendor reduces its price to other customers during the term of this Purchase Order, Vendor agrees to reduce the price hereof correspondingly. Vendor

warrants that prices shown on this Purchase Order shall be complete, and no additional charge of any type shall be added without Thornton's express written consent. Charges included in Vendor's price include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, loading and crating.

**Force Majeure**

Thornton may delay delivery or acceptance of goods or services occasioned by causes beyond its control. Vendor shall hold such goods or withhold such services at the direction of Thornton and shall deliver them when the cause affecting the delay has been removed. Thornton shall be responsible only for Vendor's direct additional costs in holding the goods or delaying performance of the services at Thornton's request. Causes beyond Thornton's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, unusually severe weather, acts of war, or terrorism.

**Release**

Vendor agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Thornton or its officers, employees, agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of goods or services furnished under this Purchase Order; and Vendor further agrees to indemnify Thornton, its officers, employees, agents, and customers against any and all expenses, losses, royalties, profits and damages, including court costs and attorneys' fees, resulting from any such suit or proceeding, including any settlement. Thornton may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Vendor.

**Independent Contractor**

Vendor shall remain liable for Vendor's obligations under this Purchase Order despite any subcontracting or assignment of performance of services by Vendor's employees, or persons under contract to Vendor, to be done on Thornton's property, or property of Thornton's customers, the Vendor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Thornton.

**Insurance**

Vendor shall maintain all necessary insurance coverages, including liability and workers' compensation insurance.

**Indemnification**

To the fullest extent permitted by law, Vendor 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 or services to be performed under this Purchase Order, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of Vendor, any subcontractor of Vendor, or any officer, employee or agent of Vendor, 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.

**Changes**

Thornton shall have the right, at any time, to make changes in drawings, designs, specifications, materials, packaging, form, or place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or time required for the performance of the work or services under this Purchase Order, an equitable adjustment shall be made and this Purchase Order shall be modified in writing accordingly.

**Inspection, Testing, Rejection**

Payment for goods or services delivered under this Purchase Order shall not constitute acceptance thereof. Thornton shall have the right to inspect such goods or review such services or work product and to reject any or all of such goods or services which are, in Thornton's judgment,

defective or non-conforming. Goods rejected and goods supplied in answer to questions called for herein may be returned to Vendor at Vendor's expense, and in addition to Thornton's other rights, Thornton may charge Vendor all expenses of unpacking, examining, re-packing and re-shipping such goods. In the event Thornton receives defective or nonconforming goods when it is not apparent on examination that they are defective or nonconforming, Thornton reserves the right to require replacement, as well as payment of damages.

Thornton shall have the right to require re-inspection or re-performance of services which are, in Thornton's judgment, incomplete, incorrect, or non-conforming.

Nothing contained in this Purchase Order shall relieve, in any way, Vendor from the obligation of testing, inspection, and quality control.

**Order Agreement**

This Purchase Order and any and all addendum documents referred to on the face hereof, unless noted otherwise, constitute the entire agreement between the parties.

**Assignment and Subcontracting**

No part of this Purchase Order may be assigned or sub-contracted without the prior written approval of Thornton.

**Assignment**

If it becomes necessary for Vendor to ship by a more expensive way than specified in the Purchase Order, any increased transportation costs resulting therefrom shall be paid for by Vendor without reimbursement by Thornton, unless the necessity for such expedited shipping has been caused by Thornton.

**Waiver**

Thornton's failure to insist on performance of any of the terms or conditions of this Purchase Order, or to exercise any right or privilege, or Thornton's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

**Time is of the Essence**

Time is of the essence and if delivery of items or rendering of services required by this Purchase Order is not completed by the time promised, Thornton reserves the right, without liability and in addition to its other rights and remedies, to terminate this Purchase Order by notice effective when received by Vendor as to items not yet shipped, or services not yet rendered, and to purchase substitute items or services elsewhere and charge Vendor for any loss incurred.

**Limitation on Thornton's Liability**

In no event shall Thornton be liable for anticipated profits or for incidental or consequential damages. Thornton's liability on any claim of any kind for any loss or damage arising out of or in connection with, or resulting from this Purchase Order, or from the performance or breach thereof, shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Thornton shall not be liable for penalties of any description.

**Non-Appropriation of Funds**

In the event that Thornton's legislative body fails to appropriate funds for the continuation of a multi-year agreement for any fiscal year past the first fiscal year, Thornton may, at the beginning of the fiscal year for which its legislative body does not appropriate funds and upon thirty (30) calendar days prior written notice, terminate this Purchase Order without penalty and thereupon be released of any further obligations.

**Waiver of Certain Limitations**

This Purchase Order shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof or the work or services be provided hereunder shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to this Purchase Order or the work or services to be provided hereunder asserted by Vendor against Thornton shall be brought within two (2) years from when the action accrues, pursuant to C.R.S. § 13-80-152.