

**THE CITY OF THORNTON
9500 CIVIC CENTER DRIVE
THORNTON, CO 80229-4326**

**Project Manual
For
Purchase of**

**THORNTON WATER PROJECT
PRE PURCHASE - PUMPS
PROJECT NO. 12-777J1**

November 2025

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INVITATION FOR BID PROPOSALS

**City of Thornton
9500 Civic Center Drive
Thornton, CO 80229-4326**

Sealed Bid Proposals for purchase of the **Thornton Water Project – Pre-Purchase Pumps, Project No. 12-777J1** will be received in the Contract Administration Office at the City of Thornton (Thornton) City Hall (2nd floor), 9500 Civic Center Drive, until **2:00 p.m., Wednesday, December 17, 2025**. At that time, the bid will be publicly opened and read aloud.

Note: Late Proposals will not be accepted under any circumstances. Vendors electing to submit their bid via mail or courier service accept all responsibility for delivery to the Contract Administration Office by the bid closing time indicated. Thornton is not responsible for lost or late delivery of bid proposals.

Project Description: Thornton is purchasing selected pump equipment for a future pump station associated with the Thornton Water Project prior to contractor selection. Manufacturer shall provide Services and Equipment as detailed in the Purchase Agreement and its Exhibits. It is Thornton's intent to purchase the listed items due to their long lead times for submittal and manufacture. Equipment shall be delivered to the future contractor at the site of the pump station north of Fort Collins, CO.

Thornton utilizes the BidNet Direct System at www.BidNetDirect.com to distribute official copies of the Drawings and Project Manual ("Bid Documents") for use in preparing Bid Proposals. Bidders will be required to register with the website to download the Bid 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. Bidders are required to acknowledge all Addenda with their Bid Proposal and are encouraged to either register with the website or to view the Addenda posted on the Contract Administration Solicitation website: <https://solicitations.thorntonco.gov/solicitations> prior to submission of a Bid Proposal. Bidders that do not acknowledge all Addenda may be considered non-responsive.

An optional Pre-Bid Conference will be held in **VIA TELECONFERENCE**, on **Wednesday, December 3, 2025, at 1:00 p.m. local time**. All Prospective Bidders are encouraged to attend. Email a request to the Contracts Supervisor at the email address below for a link to the teleconference.

The successful Bidder will be determined on the basis of the lowest responsive and responsible Bid Proposal. The apparent successful Bidder(s) will be post qualified. Thornton based businesses may be granted consideration in evaluation of Bid Proposals, 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' Bid Proposals will be discounted for the purpose of evaluating the Bid Proposal prices when compared to non-Thornton-based businesses by the lesser of five percent (5%) of the Bid Proposal price or ten thousand dollars (\$10,000).

Thornton reserves the right to reject any or all Bid Proposals, to waive any informalities or irregularities in the Bid Proposals received, and to accept the Bid Proposal which in its judgment best serves the interests of Thornton. The apparent successful Bidder will be required to complete a Reference Authorization and Release Form.

All questions shall be directed in writing to Patrick Hinterberger, Contracts Supervisor, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax – 303-538-7556, or e-mail – patrick.hinterberger@thorntonCO.gov, 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays.

Date First Published: November 21, 2025

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

BY:  Patrick Hinterberger
Contracts Supervisor

INFORMATION FOR BIDDERS

Thornton may consider non-conforming any Bid Proposal not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all Bid Proposals.

Bidder may, without prejudice, withdraw a Bid Proposal after it has been deposited with Thornton, provided the request for such withdrawal is received by Thornton, in writing, before the deadline set for submission of Bid Proposals. Telephonic communications withdrawing a Bid Proposal will not be accepted.

Any Bidder may modify its Bid Proposal in writing any time prior to the scheduled deadline for submission of Bid Proposals, provided such modification is received by Thornton prior to the Bid Proposal submission deadline. The modification shall not reveal the Bid Proposal price, but shall provide only the addition or subtraction or other modification so that the final prices or terms will not be known by Thornton until the original sealed Bid Proposal is opened.

Any Bid Proposal received after the time and date deadline specified will not be considered.

After opening of Bid Proposals, a Bid Proposal may not be withdrawn by the Bidder for a period of sixty (60) Calendar Days, or as otherwise required by law.

Each Bid Proposal **must be submitted on the Bid Proposal form(s) provided by Thornton** and must be signed by the Bidder or its duly authorized agent. All blank spaces for Bid Proposal prices must be filled in, in ink or typewritten, **IN BOTH WORDS AND NUMERALS**, where called for in the Bid Proposal.

If there is a discrepancy between the total price in words and the total price in numbers, the total price in words will govern. If there is a discrepancy between the Unit or Lump Sum Prices multiplied by the respective quantities and the extended Bid Proposal Prices for individual Pay Items, the Unit Price or Lump Sum Prices multiplied by the respective quantity shall be the governing number, and the extended price or prices and the resulting Total Price will be adjusted accordingly.

Conditional Bid Proposals will not be accepted.

Each Bid Proposal must be submitted in a sealed envelope bearing on the outside the name of the Bidder, Bidder's address, and the name of the Project and the Project Number for which the Bid Proposal is submitted. If submitted by mail, package delivery, or courier service, a sealed envelope containing the Bid Proposal must be enclosed in a mailing envelope addressed to the Contracts and Purchasing Director, 9500 Civic Center Drive, 2nd Floor City Hall, Thornton, CO 80229-4326. Please be sure to note on the outside of the mailing envelope **"Bid Proposal Enclosed, Thornton Water Project – Pre-Purchase Pumps, Project No. 12-777J1"**.

Simultaneously with the delivery of the executed Bonds, the Contractor shall furnish its IRS W-9 Taxpayer ID Form, the Affidavit if required, the required Insurance Certificate(s), required Endorsements thereto, ACORD Form 101 if required

The successful Bidder, upon Bidder's failure or refusal to execute and deliver the required Contract, insurance certificate(s), additional insured endorsements, ACORD Form 101 if required, and/or the W-9 Form within ten (10) Calendar Days from and including the date of Notice of Award, may be deemed non-conforming and their bid rejected by Thornton.

The Bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Work shall apply to the Contract throughout, and will be deemed to be included in the Contract the same as though herein written out in full.

No interpretation of the meaning of the Drawings, Specifications, Addenda, other Bid Documents, Contract Documents, or Pre-Bid Meeting Minutes will be made to any Bidder orally. If a Bidder who contemplates submitting a Bid Proposal is in doubt about the precise meaning of any part of the proposed Contract Documents, it may submit to Thornton a written request for an interpretation. Every request for such interpretation shall be in writing addressed to Patrick Hinterberger, Contracts Supervisor, 9500 Civic Center Drive, Thornton, CO 80229-4326, fax – 303-538-7556, or e-mail – Patrick.hinterberger@ThorntonCO.gov, and to be given consideration it must be received by 5:00 p.m., on the seventh (7th) Calendar Day prior to the date fixed for the submission of Bid Proposals. The Bidder submitting the request will be responsible for its prompt and actual delivery. Thornton will not be responsible for any other explanations or interpretations of the Contract Documents which anyone may make on behalf of Thornton. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Bid Documents or to the Contract Documents which, if issued, will be posted on BidNet Direct System's website at www.BidNetDirect.com and on the Contract Administration bulletin board no later than three (3) Calendar Days prior to the date fixed for submission of Bid Proposals. Failure of any Bidder to receive any such Addenda or interpretation shall not relieve such Bidder from any obligation under its Bid Proposal, as submitted. All Addenda so issued shall become part of the Contract Documents. It shall be the responsibility of each Bidder to verify that each Addendum has been received. A bulletin board will be maintained at the Contract Administration Office which will list the current Projects with Bid Proposal due dates and all Addenda, including the date of issue for each. It is recommended that all Bidders check this board for the status of the particular Project they are interested in bidding prior to submitting a Bid Proposal.

At the time of submission of a Bid Proposal, the Bidder will have carefully examined and be thoroughly familiar with the Contract Documents, including all Addenda, and satisfied itself as to the feasibility and correctness of the Contract Documents for the construction of the Work and that it accepts all terms, conditions, and stipulations contained in the Contract Documents, and is prepared to work in peace and harmony with other contractors performing work at the Project site. Bidders also shall have reviewed the insurance requirements contained in the Contract Documents. The failure or omission of any Bidder to examine any form, instrument, or document shall in no way relieve any Bidder from any obligation in respect to its Bid Proposal. The Bidder is to confirm the completeness of the

Contract Documents on which its Bid Proposal is based. If the Bidder determines its Contract Documents are incomplete or irregular, it is the Bidder's responsibility to bring this fact to the attention of the Contract Administrator prior to submitting a Bid Proposal.

Thornton invites Bid Proposals on the form(s) included as part of this document to be submitted at such time and place as stated in the Invitation for Bid Proposals. All blanks in the Bid Proposal forms must be appropriately filled in with typewriter or ink. Bidders are instructed to submit the entire Bid Proposal form. **It is the sole responsibility of the Bidder to see that the Bid Proposal is received by Thornton before the scheduled deadline set for submission of Bid Proposals.** Any Bid Proposals received after the scheduled deadline for submission of Bid Proposals will be returned to the Bidder unopened.

The Bid Proposal must be signed in the name of the Bidder and must bear the signature in long hand of the person or persons duly authorized to sign the Bid Proposal. Changes in or additions to the Bid Proposal forms, recapitulations of the Work bid upon, alternative Bid Proposals not requested by Thornton, or any other modifications of the Bid Proposal which are not specifically called for in the Bid Documents, the Contract Documents, or an Addendum may be rejected by Thornton as not being responsive to the solicitation.

Bid Proposals shall be made in the name of the principal, and if a co-partnership, the names of all partners shall be given. Exact postal address shall be given in all cases. If Bid Proposals are submitted by an agent, satisfactory evidence of agency authority must accompany the Bid Proposal. Corporate Bidders, to be eligible to enter into a Contract with Thornton, shall be qualified to do business in the State of Colorado and Thornton. Bidders shall comply with applicable licensing requirements. Firms which have not become licensed in Thornton shall obtain a permit to do business in Thornton pursuant to Thornton's requirements prior to submission of a Bid Proposal.

The Bid Proposal submitted must not contain erasures, corrections, or changes from the printed forms as completed in typewriter or ink, unless such erasures, corrections, or changes are authenticated by affixing in the margin immediately opposite the erasure, correction, or change, the initials of the person who signed the Bid Proposal or the initials of such other person as may be authorized by the Bidder to make erasures, corrections, or changes in the Bid Proposal, and such authorization must be evidenced by written confirmation, executed by the person authorized to sign the initial Bid Proposal, attached to the Bid Proposal at the time of submittal.

Bid Proposals may be considered non-conforming and may be rejected for any of the following reasons, unless otherwise provided by law:

1. If the Bid Proposal form(s) furnished to the Bidder by Thornton is not used or is altered;
2. If there are unauthorized additions or conditional Bid Proposals, or irregularities of any kind which may tend to make the Bid Proposal incomplete, indefinite, or ambiguous as to its meaning;

3. If the Bidder adds any provisions reserving the right to accept or reject any Contract award or to enter into a Contract pursuant to an award;
4. If the Unit Prices or Lump Sum Prices contained in the Bid Proposal are unbalanced either above or below reasonable cost analysis values as determined by Thornton;
5. If the Bidder fails to insert a price for every Bid Proposal Pay Item indicated;
or;
6. If the Bidder fails to complete the Bid Proposal in any other particulars where information is requested so Bidder's Proposal may be properly evaluated.

Thornton reserves the right to reject any or all Bid Proposals and to waive irregularities or informalities as may be deemed in Thornton's best interest.

Thornton reserves the right to reject any Bid Proposal if investigation of such Bidder fails to satisfy Thornton that such Bidder is properly qualified to carry out the obligations and to complete the Work contemplated by the Contract Documents. Any or all Bid Proposals will be rejected if there is reason to believe that collusion exists among Bidders.

Thornton reserves the right to prequalify Bidders, to post-qualify Bidders, to reject all Bid Proposals, not to make an award, and/or to accept the Bid Proposal deemed most advantageous and in the best interest of Thornton. The Bidder must comply with all information and instructions for Bidders. The Award of the Contract, if made by Thornton, will be made by written Notice of Award to a qualified, responsible, responsive, and trustworthy Bidder submitting the lowest and best Bid Proposal, but Thornton shall determine in its sole discretion whether a Bidder is responsible, responsive, qualified, and trustworthy to perform the Contract, whether by prequalification, post-qualification, or other methods, and which Bid Proposal is the lowest and best and whether it is in the best interest of Thornton to accept the Bid Proposal. Thornton reserves the right to request financial statements, together with a Bidder's Post Qualification Form, which includes a statement of past experience, personnel resumes, Construction Equipment available to perform the Work, the Bidder's proposed Schedule of Work, and other qualification information, from any Bidder considered for award of a Contract. Failure or refusal to furnish such qualification information, or failure to provide a satisfactory statement of financial responsibility, shall constitute a basis for disqualifying any Bidder. In evaluating whether the Bidder is responsible, Thornton, in its sole discretion, may consider such things as whether the Bidder is in arrears to Thornton under any obligation; has an unacceptable performance or claims history with Thornton or with other owners; is not trustworthy; has submitted false information in the past, or is currently involved in a dispute with Thornton. Thornton also reserves the right to require evidence of satisfactory operation of any Construction Equipment required to be used to perform the Work. Thornton will consider the Bid Proposals and reserves the right to reject any or all Bid Proposals, to pass upon the regularity, or waive any irregularity or informality, of the Bidders and the acceptability of the Surety offered.

Prior to bidding, requests to substitute Materials or Equipment from those specified shall be made in writing and shall identify the Material or Equipment, or the fabrication or installation method to be replaced, in each request and shall include related Specification

sections and Drawing numbers. The Bidder shall provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:

1. Product data, including Drawings and descriptions of products, fabrication and installation procedures;
2. Samples, where applicable or requested;
3. A detailed comparison of significant qualities of the proposed substitution with those of the Work specified. Significant qualities may include elements such as size, weight, durability, performance, and visual effect;
4. Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by Thornton and separate contractors, which will become necessary to accommodate the proposed substitution;
5. Any additional information Thornton may request.

All requests for substitution shall be submitted in writing to the Contracts Supervisor, and all such requests shall be received by Thornton no later than 5:00 p.m., on the tenth (10th) Calendar Day prior to the Bid Proposal submittal date. If any additional Material or Equipment is approved, the information will be published in an Addendum prior to the Bid Proposal submittal date. All Bid Proposals shall be based only on approved or specified Materials and Equipment. Thornton is not obligated to approve substitutions, either before Bid Proposal submission or after Notice of Award, regardless of whether Material, Equipment, or process is considered equivalent.

The successful Bidder, upon award of a Contract, shall commence Work on the date specified in the Notice to Proceed and shall diligently prosecute the Work and shall substantially complete all Work within the Contract Time. Should the Contractor fail to substantially complete all Work in the allotted time period, Liquidated Damages may be assessed.

At the Pre-Construction Meeting or within fourteen (14) Calendar Days after Notice of Award, whichever occurs sooner, the successful Bidder shall submit to Thornton a preliminary schedule showing the order in which the Bidder proposes to carry out the Work to successfully construct all of the Work within the Contract Time. This schedule shall be in addition to any other schedule requirements contained in the Contract Documents. Such preliminary schedule shall show the dates on which the Bidder will start and complete the parts of the Work and the order of construction and delivery dates of critical Materials and Equipment. The preliminary schedule shall be subject to acceptance by Thornton. The schedule shall be binding on the Bidder and shall be adhered to by the Bidder unless, for good cause shown, a modification of schedule shall be requested in writing to Thornton and approved by Thornton in accordance with the General Conditions of the Contract.

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PROCEDURE FOR CONTRACT SIGNING

- A. **The following electronic (digital) signing process will be used through a Thornton approved digital signature service:**
1. Signed Notice of Award - A digitally signed Notice of Award will be delivered to Vendor by e-mail or through an approved digital signature service.
 2. Within ten (10) Calendar Days of Notice of Award, Contractor shall return Insurance Certificates, W-9, and applicable affidavits to Thornton. The following shall be submitted when returning the executed Bonds to Thornton:
 - i. A copy of the Certificate(s) of Insurance, the Additional Insured Endorsements, and ACORD Form 101 if required, showing all required insurance coverages and limits. Include the Project Number and Contractor's e-mail address on the face of the Certificate of Insurance for future updates and inquiries.

If the Acord Certificate is used, it must be a signed (not stamped) certificate.

Thornton, its officers, employees, and agents shall be named as Additional Insureds. This language is to appear on the face of the certificate. Additional Insured Endorsements, indicating completed operations coverage where applicable, must also be submitted.
 - ii. W-9 Taxpayer ID Form.
- B. Thornton will route the Contract documents to all signatories via an approved digital signature service.
1. Contractor signs and attests (if applicable) the Contract via the approved digital signature service. Note: The Contractor's representative signing the Contract must be authorized to bind the company in a contract with Thornton.
 2. If Contractor is a corporation, Contracts must be attested, and attestation witness must be an officer of the corporation of at least a Secretary rank (not a notary). If Contractor is not a corporation, attestation is not required.
 3. Print title of the Contract signer, and the attestation witness if applicable, in the spaces provided.
 4. Note: The last City of Thornton signatory will date the Contract.

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BID PROPOSAL

**To: City of Thornton
Attention: Contracts and Purchasing Director
9500 Civic Center Drive
Thornton, Colorado 80229**

The undersigned Bidder, having examined the Specifications, Drawings, and all other documents contained in the Contract Documents, and having examined the Project site where the Work is to be performed, and having familiarized itself with all local conditions affecting the Work and having knowledge of the cost of Work, hereby proposes to execute and perform the Contract set forth in these Contract Documents, of which this Bid Proposal forms a part, and shall do the Work therein described in accordance with the terms and conditions therein set forth, and shall furnish all required labor, Materials, Equipment, tools, Construction Equipment, transportation and services for said Work, and shall pay all applicable fees, permits, taxes, and other incidental costs, all in strict conformity with the Contract Documents, for an amount computed upon the basis of the quantity of Work actually performed at the Bid Proposal prices provided below.

By submitting this Bid Proposal, the Bidder acknowledges its understanding that the Bid process is solely intended to serve the public interest, in achieving the highest quality of services and goods at the lowest price and that no right, interest, or expectation shall vest or inure to the benefit of a Bidder as a result of any reliance or participation in the process. In submitting this Bid Proposal, it is understood that the right is reserved by Thornton to reject any or all Bid Proposals and waive informalities or irregularities in Bid Proposals.

The undersigned further agrees, if awarded the Contract for the Work included in this Bid Proposal, to begin and to complete the Work contemplated in accordance with all the conditions set forth in the Contract Documents.

The undersigned has carefully checked the Unit Prices, Lump Sum Prices, and Extended Prices inserted by it and understands that they are the Bidder's sole responsibility and that Thornton will not be responsible for any errors or omissions on the part of the undersigned Bidder in preparing this Bid Proposal.

The undersigned certifies that this Bid Proposal is genuine, not collusive, or made in the interest or behalf of any person not named as provided in the Instruction to Bidders and that the undersigned has not, directly or indirectly, induced or solicited any other Bidder, or induced any other person, firm or corporation to refrain from submitting a Bid Proposal, and the undersigned has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.

The Bidder grants Thornton the right to hold the lowest three (3) Bid Proposals received, together with the accompanying Bid Proposal securities, for a period of sixty (60) Calendar Days after the date of submission of the Bid Proposals and to delay Notice of Award until the end of such time period.

The undersigned Bidder further grants Thornton the right to award this Contract on the basis of any possible combinations of base Bid Proposal and add or deduct alternate(s), if any, that best suits Thornton's needs.

The undersigned Bidder further agrees to furnish to Thornton all such information and data deemed by Thornton to be necessary to determine the ability of Bidder to perform the Work, and within two (2) Business Days of Bid Proposal submission, shall provide Thornton required information.

The Bidder's attention is directed to the fact that all applicable state and federal laws, county and city ordinances, licenses and regulations of all authorities having jurisdiction over the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

The undersigned Bidder acknowledges that the 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. For the purposes of this Charter Section, relative shall include domestic partners. The undersigned Bidder 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 Bidder or with this Invitation for Bid Proposals, except as follows (list, if none state "None"): _____

The undersigned Bidder acknowledges the following Addenda (if none, so state):

Addendum #	Dated	Initial
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SCHEDULE OF CONTRACT PAY ITEMS AND PRICES

Unit Price Equipment and Special Services					
Item No.	Description	Unit	Quantity	Unit Price	Extended Price
1	3,000 HP Pumps and Motors (Tag Numbers PMP-305, PMP-306)	EACH	2	\$	\$
2	600 HP Pumps and Motors (Tag Numbers PMP-302, PMP-303)	EACH	2	\$	\$
3	VFD for 3,000 HP Pumps and Motors (Tag Numbers VFD-305, VFD-306)	EACH	2	\$	\$
4	VFD for 600 HP Pumps and Motors (Tag Numbers VFD-302, VFD-303)	EACH	2	\$	\$
Total					\$

Indicate if you are claiming eligibility for Local Vendor Consideration by checking below, and if so, supply the required documentation.

Yes, Bidder claims eligibility for Local Vendor Consideration.

No, Bidder does not claim eligibility for Local Vendor Consideration.

Total Bid Proposal _____ Dollars

(Words)

Cents

(Words)

\$ _____

(Numerals)

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Dated this _____ day of _____, 20____.

Firm Name: _____

Authorized Signer (Print Name): _____

Signature: _____

Title: _____

Bidder's Legal Status: _____

State of Organization: _____

Firm's Address: _____

Telephone: _____

E-mail: _____

Witness: (Attest and Seal if Bid Proposal is by Corporation)

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CONTRACT

PURCHASE AGREEMENT

This Purchase Agreement is made and entered into on _____, (“Effective Date”) by and between the **City of Thornton**, a Colorado home rule municipality, in the state of Colorado (hereinafter, “Buyer” or “Thornton”) and _____ (hereafter, the “Manufacturer”). Thornton and Vendor hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

I. RECITALS

- A. Buyer desires to have Manufacturer manufacture certain equipment (as defined below) exclusively for Buyer using the Specifications provided by Buyer’s engineer (as identified below); and
- B. Manufacturer agrees to manufacture the Equipment for Buyer on the terms and conditions set forth in this Agreement; and
- C. Buyer will, in turn, purchase from _____ and associated equipment, parts, and documentation from Manufacturer’s facility in or near [name of city], [name of state], as such items are more particularly described in Exhibits A and B, which is attached to and by this reference made a part of this Agreement (collectively, the “Equipment”). The Equipment shall include only those items described in Exhibit; and
- D. Buyer has retained Carollo Engineers (“Engineer”) to design the Equipment in accordance with the Technical Specifications described in Exhibit A (“Equipment Specifications”), and Plans described in Exhibit B (“Equipment Plans”); and
- E. Buyer will provide to Manufacturer the Equipment Specifications prepared by Engineer for the sole purpose of manufacturing the Equipment required by Buyer subject to the terms and conditions, set forth in this Agreement; and
- F. Buyer, having all the rights and legal ownership assigned by and purchased from the Engineer, hereby grants and authorizes the Manufacturer to fabricate, furnish and deliver the Equipment as specified in Exhibits A and B to Buyer in accordance with the terms and subject to the conditions set forth in this Agreement; and
- G. Manufacturer hereby agrees to manufacture and deliver to Buyer the Equipment and associated equipment, parts, and documentation identified in Exhibits A and B in accordance with the terms and subject to the conditions set forth in this Agreement.

- H. Moreover, for purposes of this Agreement, Manufacturer is a merchant dealing in the particular goods that are the subject of this Agreement and Buyer is a nonmerchant as defined by the Uniform Commercial Code in effect in Colorado on the date of execution of this Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS & CONDITIONS

- A. **Notice to Proceed.** Upon receipt of a written Notice to Proceed from Thornton and Manufacturer will begin to furnish all of the labor, supplies and materials, equipment, and any other facilities or resources required to perform and complete the work authorized by the Notice to Proceed to complete the Equipment. The Equipment will be manufactured by the Manufacturer in the best and most workmanlike manner by qualified, careful and efficient workers, and in conformity with the best standard manufacturing practices.
- B. **Submittal, Review, Manufacture and Acceptance of Equipment Built to Buyer's Specifications.**
1. As used in this Agreement, the term "Equipment" shall mean the equipment described in Exhibits A and B attached hereto and made a part hereof to be manufactured by Manufacturer exclusively for Buyer in accordance with this Agreement, as may be modified and improved at the request of Buyer.
 2. The designs and drawings provided by the Engineer, which have been previously furnished by Buyer to Manufacturer, and receipt whereof by Manufacturer is hereby acknowledged. It also includes any and all improvements, changes and/or modifications to the Equipment, which the parties hereto may make upon mutual agreement during the term of this Agreement.
 3. Manufacturer shall manufacture in its own facilities or those of sub-contractors of its designation and remit to Buyer the Equipment, as defined in Exhibits A and B, on the basis of Buyer's Engineering specification and drawings referred to above, and incorporating such changes and improvements therein as the parties hereto mutually determine and agree upon from time-to-time. The parties agree that final assembly, final test and inspection, and packing will at all times be done by Manufacturer in its own factories.
 4. Manufacturer shall complete and promptly furnish Buyer the Equipment no later than [the prescribed dates in the table below] or unless by another mutually agreed upon date.

5. The Engineer of Buyer and Manufacturer shall jointly confirm all specifications in sufficient detail necessary for the production of the Equipment, which specifications shall include the quality of the material used and the performance standards of the Equipment to be manufactured by Manufacturer. Such specifications, when completed, shall be incorporated into this Agreement as an integral part hereof, and no changes may be made to such specifications without the written consent of both Buyer and Manufacturer.
6. The Equipment manufactured and sold by Manufacturer to Buyer hereunder shall conform to the specification established in the manner described above, and shall be marked as Buyer may determine. Buyer agrees that a separate marking of Manufacturer's trademark may also be made in such place and manner as the parties hereto shall determine and include in the specifications.
7. Upon the terms and subject to the conditions contained in this Agreement, by the Date (defined below), Manufacturer shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Manufacturer to the Equipment. As the term is used in this Agreement and the exhibits to this Agreement, "Equipment" shall also mean and include copies of all of Manufacturer's records and files which relate to any of the Equipment, including but not limited to the following: (i) operations, maintenance, environmental and engineering records; (ii) facility records; (iii) accounting files and operating statements and files; (iv) any and all contracts, purchase orders or other agreements with third parties including those with its subcontractors and suppliers and (v) any other records or files in the possession of Manufacturer relating to the Equipment, save and except for records the disclosure of which would jeopardize any privilege available to Manufacturer relating to such records, would cause Manufacturer to breach a confidentiality obligation to which it is bound, or would cause Manufacturer to violate any applicable law.

C. **Modifications and Changes to the Equipment.**

1. A change to the Equipment is any change or modification that is materially different from, or in addition to the Equipment described in Exhibits A and B of this Agreement.
2. Any change, including any increase of the Compensation, shall only be effective or paid unless authorized by a Purchase Order or written amendment executed by Buyer's City Manager ("City Manager") or City Manager's designee(s). If Manufacturer proceeds without such written authorization, then Manufacturer shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit, or implied contract.

D. **Testing and Acceptance of the Equipment.** Upon receipt of the Equipment Buyer shall check the Equipment and perform such other tests and inspections deemed appropriate by Buyer in order to assess the integrity and condition of the Equipment, provided that any and all such testing and inspections does not damage the Equipment before acceptance. Manufacturer shall have the right to have a representative present for any such testing, all of such testing shall be performed in compliance with all applicable laws, and Buyer shall deliver to Manufacturer a copy of the results or reports prepared in connection with such testing.

E. **Manufacturer’s Equipment Schedule Dates.**

1. The Milestone dates (see below), including the submittal of Specifications and Drawings, the delivery of Equipment, and the furnishing of Special Services as stated in this Agreement, means that time is of the essence.
2. The following schedule are the designated timeline (“Milestone Dates”) for the production of the Equipment:

Milestone(s)	Date (# of Days)	Notes
Initial Submittal of Shop Drawings	28 days	From Notice to Proceed
Completion and Acceptance of Shop Drawings	84 days	From Notice to Proceed
Delivery of Equipment to Destinated Location	434 days	From Notice to Proceed
Acceptance by Buyer	7 days	From Delivery
Commence Special Services for Goods, as needed	434 days	From Notice to Proceed
Complete Special Services for Equipment	850 days	From Notice to Proceed
Final Inspection and Acceptance after Delivery of Equipment and Special Services as needed	850 days	From Notice to Proceed

3. **Submittal of Specifications and Drawings:** Buyer or the Engineer on behalf of Buyer will submit all Specifications and Drawings required by the Agreement to Manufacturer for review and approval.

4. Manufacturer's Review: Manufacturer will review Specifications and Drawings for approval or if not approved, return them with comments regarding what information is needed for approval no more than fourteen (14) Calendar Days after submittal of Specifications and Drawings to Manufacturer. If additional time is needed because the submittals were unsatisfactory, Manufacturer shall resubmit them within fourteen (14) Calendar Days after response from Buyer or the Engineer, or within such period of time as agreed to by the Parties. However, Resubmittals shall be limited whenever possible.

F. **Delivery.**

1. The Equipment shall be delivered to Buyer F.O.B. the place of shipment. Delivery of the Equipment to a common carrier shall be deemed a satisfactory delivery by Manufacturer to Buyer. Buyer agrees to pay all freight, insurance, packing and other transportation charges related to said delivery. Manufacturer shall have the right, but shall not be obligated, to prepay such charges with Buyer's consent, in which event Buyer agrees to reimburse Manufacturer in the amount thereof upon presentation by Manufacturer of evidence of payment.
2. In connection with the delivery of the Equipment, Buyer may designate in writing, not less than ten (10) Business Days prior to the shipment date, the carrier for shipment and the amount of insurance and nature of coverage.
3. If Buyer fails to so designate any or all such items, Manufacturer, at its discretion, may specify any item not so designated. Manufacturer shall select, at its discretion, the types and amount of crating and the carrier of any insurance. All shipments hereunder will be made to Buyer at address specified by Buyer.

G. **Compensation.**

1. Equipment Purchase Price. After Final Acceptance by Buyer, Buyer shall pay Manufacturer \$[xxx dollar amount] ("Purchase Price") for the Equipment in accordance with this Agreement.
2. Special Services. The total Thornton shall pay, and Manufacturer will receive for furnishing any additional materials or services is \$[xxx dollar amount] based on the table below, which is subject to adjustment by a Change Order and/or written amendment as approved by Buyer.
3. Any Compensation herein is subject to adjustment but only by a written Change Order authorized by Buyer in writing in accordance with its current policies.

Unit Price Equipment and Special Services					
Item No.	Description	Unit	Quantity	Unit Price	Extended Price
1	3,000 HP Pumps and Motors (Tag Numbers PMP-305, PMP-306)	EACH	2	\$	\$
2	600 HP Pumps and Motors (Tag Numbers PMP-302, PMP-303)	EACH	2	\$	\$
3	VFD for 3,000 HP Pumps and Motors (Tag Numbers VFD-305, VFD-306)	EACH	2	\$	\$
4	VFD for 600 HP Pumps and Motors (Tag Numbers VFD-302, VFD-303)	EACH	2	\$	\$
Total					\$

H. **Payment Procedures.**

1. Manufacturer shall submit invoices to ap.invoices@ThorntonCO.gov at the following percentages for each line item indicated below based on successful completion of each specified Milestone:

Milestone	Percentage of Lump Sum
Approval of Shop Specifications and Drawings Submittals	10%
Completion of Factory Testing	5%
Delivery of materials to project site	70%
Installation of Equipment and related Equipment parts	10%
Successful testing of installed Equipment	5%
Total	100%

III. MISCELLANEOUS TERMS

A. **Title and Risk of Loss.**

1. The risk of loss from any casualty to the goods from any cause shall be on Manufacturer until [insert delivery date or after Buyer's final approval], or until

insurance coverage for the full value of the goods against loss from any cause during transportation is procured in favor of Buyer by either party from Manufacturer's insurance company or any other insurer acceptable to Buyer.

2. Title to and risk of loss, damage and destruction of the Equipment shall transfer from Manufacturer to Buyer one (1) day after delivery date.

B. Manufacturer's Warranties

1. Manufacturer warrants to Buyer that, for a period of twenty-four (24) months after delivery, the Equipment will conform in all material respects to the Specifications attached hereto as Exhibits A and B and will be free from defects in materials and workmanship. Manufacturer's obligation under this warranty is limited to, at Manufacturer's option, repairing or replacing, at Manufacturer's option, at Manufacturer's facility or at the location of the Equipment, any Equipment or parts thereof that Manufacturer determines not to conform to this warranty.
2. Buyer shall promptly notify Manufacturer in writing of any alleged defects in the Equipment and specifically describe the problem. Manufacturer shall have no obligations under this warranty with respect to any defect unless it receives notice and a description of such defect no later than thirty (30) Calendar Days following the expiration of the warranty period.
3. Upon receipt of such notice, Manufacturer shall provide warranty service at the location of the Equipment or shall instruct Buyer as to the part or parts of the Equipment that Buyer shall ship back to Manufacturer for repair or replacement. Manufacturer will pay the costs of transporting repaired or replaced Equipment back to Buyer and will reimburse Buyer for costs of transporting Equipment to Manufacturer which Manufacturer determines to have been defective; otherwise, Buyer shall pay all costs of transportation.
4. Manufacturer represents and warrants that it has title to the Equipment and all its parts to be conveyed hereunder and has the right to sell the same and that at the time of delivery, the Equipment shall be free of any security interest or other lien or encumbrances whatsoever.

- C. **Infringement Indemnification.** To the fullest extent permitted by law, Manufacturer will defend, indemnify, and hold harmless Thornton, its officers, agents and employees, at its own expense, any suit or proceeding against Buyer for the direct infringement of United States patents and trademarks by the Equipment purchased from Manufacturer hereunder. Manufacturer shall pay all damages and costs finally awarded against Buyer because of direct infringement; provided, however, that Manufacturer shall not be obligated to defend or be liable for costs or damages awarded in any suit or proceeding for infringement of patents by any other products, or any completed equipment, system, assembly, combination, method or process, in which, or in the manufacture or testing of which, any Equipment purchased from Manufacturer may be used; and provided further that Manufacturer's obligations to pay such damages and costs shall not apply to any alleged infringement occurring

after Buyer has received notice of such alleged Infringement unless Manufacturer thereafter gives to Buyer written consent for such continuing alleged infringement. Manufacturer's liability hereunder shall not exceed the purchase price paid by Buyer for the infringing Equipment, and Manufacturer shall not be liable for any collateral, incidental or consequential damages awarded against Buyer. Besides this obligation, Buyer may seek any and all other legal remedies available to Buyer and this obligation shall not be considered its exclusive remedy.

D. **Insurance.** Manufacturer shall procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:

1. Workers' Compensation Insurance. Workers' compensation insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Evidence of qualified self-insured status may be substituted.
2. Commercial General Liability Insurance (MINIMUM LIMITS)
 - a. Each Occurrence \$4,000,000
 - b. Products/Completed Operations Aggregate \$4,000,000
 - c. Personal and Advertising Injury \$4,000,000
 - d. General Aggregate \$10,000,000

The policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Vendor; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, liability resulting from explosion, collapse, or underground exposures. The coverage shall not exclude faulty workmanship as a covered occurrence.

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

3. Automobile Liability Insurance. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Vendor's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.
4. Additional Insured. Vendor shall name Buyer, its officers, agents, and employees as additional insureds with respect to the Commercial General Liability, Auto Liability and, if required, Builder's Risk and Installation Floater coverages above.

5. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded along with the Additional Insured Endorsement to Buyer by Vendor's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Buyer **prior to commencement of any Work under this Agreement.** The initial completed Certificate of Insurance and Additional Insured Endorsement shall be sent to:

City of Thornton
Patrick Hinterberger, Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton's Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date. Indicate "Renewal COI" in the email subject line. Buyer reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Vendor agrees to execute any and all documents necessary to allow Buyer access to any and all insurance policies and endorsements pertaining to this particular Project.

6. Failure to Insure. Failure on the part of Vendor or subcontractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Agreement upon which Buyer may immediately terminate this Agreement, or at its discretion, Buyer may procure, or renew any such policy, or any extended reporting period thereto, and may pay any and all premiums if required, and all monies so paid by Buyer shall be repaid by Vendor to Buyer upon demand, or Buyer may offset the cost of the premiums against any monies due to Vendor from Buyer.
7. Other Insurance Requirements.
- a. Vendor shall cause any Subcontractor to procure and maintain adequate levels of insurance coverage for Workers' Compensation, Commercial General Liability, Automobile Liability, and other coverages Vendor may require. For Commercial General Liability and Automobile Liability insurance of any subcontractor, Buyer will be named as an additional insured. Vendor shall prepare a schedule of required coverages for each of its Subcontractors and shall submit such schedule to Buyer prior to any Subcontractor commencing any Work on a Task Assignment under this Agreement. Such coverages for any Subcontractors shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Vendor.

- b. Vendor shall procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Vendor pursuant to this clause. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- c. Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Buyer and Vendor against other insurable hazards relating to the Work to be done.
- d. Every policy required above shall be primary insurance and any insurance carried by Buyer, its officers, or its employees shall be excess and not contributory insurance to that provided by Vendor. Vendor shall be solely responsible for any deductible losses under the policies required above.
- e. Vendor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- f. All policies shall include a provision that the coverages afforded under the policies shall not be canceled, terminated, or materially changed prior to the natural termination date until at least thirty (30) Calendar Days prior written notice has been sent to Buyer. The Certificate(s) shall indicate the form used, if any, under which this provision is included.
- g. Waiver of Subrogation. All insurance policies required of Contractor shall include a waiver of any right of subrogation written in favor of the Parties.

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

F. **Independent Contractor.**

- 1. It is understood and agreed by and between the Parties that the status of Manufacturer shall be that of an independent contractor and is only retained on a contractual basis to perform the services for limited periods of time and it is not intended, nor shall it be construed, that Manufacturer or its

employees or subcontractors under Chapter VII of the City Charter, or Chapter 54 of the City Code, are considered employed by Thornton for any purpose whatsoever.

2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Manufacturer nor** any employee, agent or sub-contractor of Manufacturer **is not entitled to unemployment insurance benefits from the City of Thornton and the only unemployment compensation coverage shall be provided by Manufacturer or some other entity besides Thornton, that Manufacturer is not entitled to Workers' Compensation benefits from Thornton and that Manufacturer is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph must be consistent with Manufacturer's insurance obligations that are set forth in this Agreement.

G. **Grounds for Termination.** Thornton may issue a written Notice of Intent to Terminate for the reasons that follow:

1. **Termination for Convenience.** In the event this Agreement is terminated for convenience, Manufacturer shall only be entitled to the Work it has satisfactorily completed up to the date of termination. Thornton is only responsible to pay Manufacturer for all Work previously authorized and satisfactorily completed prior to the date of the Notice of Termination.
2. **Termination for Cause\Default.** If Manufacturer has substantially or materially breached the terms of this Agreement, or Thornton declares Manufacturer is in "Default," shall be cause to terminate this Agreement and Thornton may seek to exercise all available legal and/or equitable remedies.
3. **Termination for Non-Appropriations.** In the event that the Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may, at the beginning of the fiscal year for which the City Council does not appropriate such funds and upon prior written notice as provided for, may terminate this Agreement without penalty and be released of further obligations.

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

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

THORNTON: City of Thornton
Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

MANUFACTURER: _____

J. **Assignment.**

1. Thornton has the right to assign this Agreement, and the furnished Equipment and Special Services, but only to a person or entity with sufficient and apparent ability to satisfy all of Thornton’s obligations under this Agreement (“Contractor/Assignee”), and Manufacturer hereby consents to such assignment.
2. The form documenting the assignment of the Agreement is attached as Exhibit C – Assignment Agreement, and must be executed by Thornton, Manufacturer and the Contractor.
3. If so, assigned the following provisions apply:
 - a. This Agreement executed initially by “Buyer” or “Thornton” and will be assigned to a construction contractor (“Contractor/Assignee”) as designated by Thornton. The assignment will occur on the effective date of the construction contract between Thornton and the Contractor/Assignee, which is expected to occur around the second quarter of 2026. Commencing on the date of acceptance of assignment by the Contractor/Assignee, all references in this Agreement to “Buyer” or “Thornton” shall substituted and assumed by the designated Contractor/Assignee.
 - b. The assignment of this Agreement shall relieve Assignor from all further obligations and liabilities of this Agreement. After assignment, Manufacturer shall be the supplier to the Contractor/Assignee and, except as noted in this document, all rights, duties, and obligations of Thornton under the Agreement shall inure to and become the rights, duties, and obligations of Contractor/Assignee.
 - c. After assignment:
 - i. The Drawings and Specifications, and any modifying Addenda will by this reference become one of the “Contract Documents” to the construction contract.
 - ii. If the Drawings and/or Specifications, as “Contract Documents” under the construction contract, are duly modified

under such construction contract, then Manufacturer and Contractor/Assignee shall enter into and execute a Change Order pursuant to this Agreement.

- iii. The Drawings and Specifications may not be modified by Manufacturer or Contractor/Assignee, singly or in tandem, except as Drawings and Specifications, may be duly modified as “Contract Documents” in accordance with the construction contract.
- iv. All performance warranties, guarantees, and indemnifications required by the Agreement will continue to run for the benefit of Assignor Thornton as the Project Owner, and to the extent required, for the benefit of the Contractor/Assignee. However, if Assignor Thornton and Contractor/Assignee make any warranty or guarantee claim, then Manufacturer shall be responsible for only one claim. Other than its remedies under such warranties, and indemnifications, Assignor Thornton will not retain direct rights under this Agreement, but will limit its rights and remedies as a party to the Construction contract only, whose scope of work will encompass the Drawings and Specifications, and as modified thereafter by a written addenda; provided, however, that any limitations on Manufacturer’s liability in this Agreement will continue to bind Assignor Thornton after the Agreement has been Assigned.
- v. After assignment, Manufacturer agrees to submit all Applications for Payment directly to Contractor/Assignee.
 - a) Contractor/Assignee shall review each Application for Payment promptly, determine the amount that Contractor/Assignee approves for payment, and then include the amount approved in the next application for payment submitted to Thornton under the construction contract.
 - b) Contractor/Assignee shall pay Manufacturer within thirty (30) Calendar Days of receipt of payment from Assignor Thornton in accordance with terms and subject to the conditions in the construction contract.
 - c) After assignment Engineer will review, approve, or deny the content of Applications for Payment under the Procurement Contract only to the extent that Contractor/Assignee, as construction contractor, has incorporated such content into payment applications that Engineer reviews under the construction contract.

vi. The Contractor/Assignee is granted the rights to any pending Claim available to Assignor Thornton.

- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of such terms and conditions.
- L. **Inspection of Records.** In connection with the Work performed hereunder, Thornton and any of its duly authorized representatives shall have access to all of Manufacturer's books, documents, papers, and any other records of Vendor that relate to the Work. Manufacturer further agrees that such records shall contain information concerning the personnel who performed the Work, the specific Work they performed and the hours they worked. Vendor shall retain these records for three (3) years after the termination date of this Agreement.
- M. **Conflict of Interest.** Intentionally Omitted.
- N. **Coordination of Services.** Manufacturer shall fully coordinate its Work with other Vendors, contractors, or other entities performing work, which interfaces with or is affected in any way by Manufacturer's Work and with any interested City or other governmental agencies.
- O. **Non-Discrimination.** Intentionally Omitted.
- P. **Advertising and Public Disclosures.** Intentionally Omitted.
- Q. **Time Is Of The Essence.** The Parties agree that in the performance of the terms and conditions of this Agreement by Vendor that time is of the essence.
- R. **Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
- S. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- T. **Joint Venture.** If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Vendor, which are set forth in this Agreement.
- U. **Taxes and Licenses.** Manufacturer shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to Work which it performs under this Agreement. Manufacturer shall promptly pay, when due, all bills, debts, and obligations it incurs performing Work under this Agreement and to allow no lien, mortgage, judgment, or execution to be filed against the Equipment.
- V. **Severability.** In the event any of the provisions, or the application of any provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

- W. **No Third Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Manufacturer and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Manufacturer that subcontractors and any other persons other than Thornton or Manufacturer receiving any benefits from this Agreement shall be deemed incidental beneficiaries only.
- X. **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.
- Y. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained in this entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those, which are expressly reserved herein to the City Manager or City Manager's designee, shall be valid unless they are contained in an instrument that is executed by all the Parties with the same formality as this Agreement.
- Z. **Liquidated Damages.**
1. 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 Manufacturer fails to achieve the Milestones set forth in this Agreement's section II.E.2.
 2. As a remedy, and not as a penalty for Manufacturer's failure to meet the Substantial Completion Date, Manufacturer shall be liable for each Calendar Day after the scheduled Milestones listed herein. The Liquid Damages shall be **One Thousand Dollars (\$1,000)** per Calendar Day until the milestone is achieved.
- Buyer shall have the right to offset any such amounts owed as Liquidated Damages and not as a penalty, in whole or in part against amounts due to Manufacturer under the Agreement. Thornton will notify Manufacturer in writing of any Liquidated Damages claim on or before Thornton deducts such sums from money owed and payable to Manufacturer. In the

alternative, Manufacturer shall pay such Liquidated Damages (without offset or deduction for any amounts Manufacturer 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.

3. Thornton's right to Liquidated Damages 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 Manufacturer under this Agreement.
4. No delay by the Thornton will be construed as a waiver of its right to assess or collect Liquidated Damages from Manufacturer. 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 Manufacturer's unexcused delay.

AA. **Dispute Resolution.**

1. Unless otherwise agreed in writing, Manufacturer shall continue to perform the Work during any dispute or dispute resolution proceedings. If Manufacturer 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.
2. 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.
3. 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.
4. Any action arising out of or relating to this Agreement asserted by Vendor 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.
5. This Agreement shall be governed by the Laws of the State of Colorado notwithstanding its choice of law principles.

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

APPROVED AS TO LEGAL FORM:

CITY OF THORNTON, COLORADO:

Tami Yellico, City Attorney

By: _____
Michael Hickman, Sr. Assistant City Attorney

Kimberly Newhart
Finance Director

ATTEST:

CITY OF THORNTON, COLORADO:

Kristen N. Rosenbaum, City Clerk

Sean Saddler, PE
Support Services Director

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

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EXHIBIT A

TECHNICAL SPECIFICATIONS (UNDER SEPARATE COVER)

EXHIBIT B

**PROJECT PLANS
(UNDER SEPARATE COVER)**

EXHIBIT C

ASSIGNMENT AGREEMENT

This assignment will be effective on the effective date of the construction contract between Buyer or Thornton and Contractor/Assignee (as "Contractor").

The Agreement between Thornton and Manufacturer for furnishing the Equipment and Special Services is hereby assigned, transferred, to Contractor/Assignee, by Thornton, as assignor. Upon assignment the Contractor/Assignee shall have the duties, rights, and obligations of Thornton under the terms of the Agreement, and will also be responsible to Thornton under the construction contract for the performance of obligations by Manufacturer, which will be a Supplier to Contractor/Assignee. Thornton, Manufacturer, and Contractor/Assignee hereby acknowledge and agree to be bound by the terms and conditions of this Agreement between Thornton and Manufacturer.

This assignment will be effective on the Effective Date of the Agreement between Thornton and the Contractor for the General Construction Work.

Assignment made by Thornton:

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Vendor:

Vendor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Contractor/Assignee:

Contractor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

Certificate Of Completion

Envelope Id: BA5F1942-9AF8-4A22-987B-9DFD2EA1DBAB
 Subject: Complete with Docusign: Proofing 12-777J1 IFB 11-21-25.docx
 Source Envelope:
 Document Pages: 43
 Certificate Pages: 1
 AutoNav: Disabled
 Envelopeld Stamping: Disabled
 Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Status: Completed
 Envelope Originator:
 Patrick Hinterberger
 9500 Civic Center Drive
 Thornton, CO 80229
 Patrick.Hinterberger@ThorntonCO.gov
 IP Address: 199.117.212.4

Record Tracking

Status: Original
 11/21/2025 1:45:33 PM
 Holder: Patrick Hinterberger
 Patrick.Hinterberger@ThorntonCO.gov
 Location: DocuSign

Signer Events

Patrick Hinterberger
 Patrick.Hinterberger@ThorntonCO.gov
 Sr. Contract Administrator
 SHI OBO City of Thornton
 Security Level: Email, Account Authentication
 (None)

Signature

DocuSigned by:

 6DA8F281E4154C8...
 Signature Adoption: Pre-selected Style
 Using IP Address: 199.117.212.4

Timestamp

Sent: 11/21/2025 1:45:47 PM
 Viewed: 11/21/2025 1:45:52 PM
 Signed: 11/21/2025 1:46:12 PM
 Freeform Signing

Electronic Record and Signature Disclosure:
 Not Offered via Docusign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Event	Status	Timestamp
Envelope Sent	Hashed/Encrypted	11/21/2025 1:45:47 PM
Certified Delivered	Security Checked	11/21/2025 1:45:52 PM
Signing Complete	Security Checked	11/21/2025 1:46:12 PM
Completed	Security Checked	11/21/2025 1:46:12 PM

Payment Events

Status

Timestamps