THORNTON

# STANDARD PROPOSAL CONSIDERATIONS

## 1) TAXES

The City of Thornton (Thornton) is exempt from federal excise taxes and state and local sales and use tax. Tax exempt certificates will be issued upon request. Any applicable taxes shall be shown as a separate line item in the Proposal.

## 2) BASIS OF AWARD

An award shall be made to the responsive, responsible, and trustworthy Proposing Vendor meeting the specifications and having the lowest possible cost consistent with the quality of the product needed, and any related Work or Service for effective use. The following is a list of the criteria that may be used in making an award:

a) Adherence to specifications;
b) Superior quality;
c) Adequacy of maintenance and service;
d) Delivery and/or completion time;
e) Guarantees and warranties;
f) Proposing Vendor's financial status;
g) Results of reference checks;
h) Past experience and cost with similar or like product or service;
i) Anticipated future cost and experience;
j) Performance of Proposing Vendor and Proposing Vendor's product for other agencies, plants, and firms;
k) Prices quoted;
l) Local Vendor consideration, ***if applicable;*** and/or
m) Overall cost effectiveness and greatest benefit as deemed in the best interest of Thornton.

## 3) PROPOSAL EVALUATION AND AWARD

For purposes of clarification, responsiveness relates to compliance with the provisions of the Invitation for Bid (IFB), including specifications and contractual terms and conditions.

Responsibility relates to the ability of a Proposing Vendor to carry out the terms and conditions of an award and/or Purchase Order, including, the Proposing Vendor's character, trustworthiness, reputation, integrity, experience, past performance, business and financial capabilities, technical organization, reliability, and the like. In evaluating whether the Proposing Vendor is responsible, Thornton, in its sole discretion, may consider such things as whether the Proposing Vendor is in arrears to Thornton under any obligation, has an unacceptable performance or claims history with Thornton or with other owners, or is currently involved in a dispute with Thornton. In the event that the Purchasing Manager or designee makes an inquiry regarding the

responsibility of a Proposing Vendor, and the Proposing Vendor fails to furnish the requested information in an adequate or timely manner, Thornton may find the Proposing Vendor non-responsible. Such a finding may be grounds for the rejection of the Proposal as determined by the Purchasing Manager to be in the best interest of Thornton.

Thornton-based businesses may be granted consideration in evaluation of Proposal price 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 Proposing Vendor requests the consideration on the Proposal Form and supplies the necessary documentation.

All nonmonetary Proposal criteria being equal, Thornton business' Proposal will be discounted for the purpose of evaluating the Proposals when compared to non-Thornton-based businesses by the lesser of five percent (5%) of the Proposal price or twenty thousand dollars ($20,000).

Price will be a major factor in evaluation and award. This shall not be construed to mean that all awards will be made to the lowest price Proposing Vendor; but rather total economy inclusive of service, delivery, product performance, Vendor performance, discounts, terms, specification adherence, and the like will also be considered in the evaluation and award process.

Thornton reserves the right to base its evaluation on a "Should Cost" analysis to reflect the real costs to Thornton arising out of, or incidental to the award. Proposing Vendors should therefore avoid unbalanced pricing and other cost presentation tactics that attempt to understate, conceal, or distort real costs, or otherwise take advantage of a mere formula-oriented, nonjudgmental type of cost or price analysis. Thornton will look to substance more than format and shall perform its cost and price evaluation on the basis of probable real costs.

Evaluation of all Proposals will be based on the factors contained in the IFB; however, additional factors not previously outlined in the IFB may be considered, should other pertinent information be made available. Thornton reserves the right to negotiate final terms with the lowest responsive, responsible, and trustworthy Proposing Vendor that may vary from those contained in the Proposal Documents.

If prior to award, it is deemed that an IFB or award is in violation of law, then the IFB or award shall be canceled or revised to comply with the law.

If after award, it is determined that an IFB or award is in violation of law, and the Proposing Vendor awarded has not acted fraudulently or in bad faith, the award may be terminated for convenience. If the Proposing Vendor awarded has acted

fraudulently or in bad faith, the award may be declared null and void without prejudice to Thornton's rights to such damages as may be appropriate.

## 4) PROPOSAL PRICING

Each Proposing Vendor must submit its proposed pricing on the Proposal forms contained within the proposal document. The Proposing Vendor shall sign its Proposal correctly, and a Proposal may be rejected if it shows any omissions, alterations of form, addition not called for, conditions or any irregularities of any kind.

Unit pricing will govern over extended prices unless otherwise stated. All prices quoted shall be firm, except in those cases where a firm price cannot be quoted due to market conditions, at Thornton's sole option, consideration may still be given to the Proposing Vendors unable to submit firm pricing. However, those Proposing Vendors submitting firm prices will be given higher consideration over those who are unable to submit a firm price, all other factors being equal. Also, in those cases where a firm price cannot be made, all non-firm pricing shall be stated and explained as explicitly as possible, showing escalation factors, stating costs that may increase and the conditions of those increases. Also, maximum or ceiling prices should be quoted where possible when Proposals contain non-firm prices.

## 5) OTHER CHARGES

Proposal prices shall include as separate line items all freight (transportation) and preparation charges, applicable taxes, and any other applicable charges fully prepaid to the point of delivery so that the Proposal price is the total price to be paid for the product. In all cases, FOB point shall be destination. Ownership of goods shall pass to Thornton at the delivery point.

## 6) ELECTRONIC DISTRIBUTION OF DOCUMENTS AND SUBMITTAL OF PROPOSAL

This IFB has been provided in an electronic format. ANY ALTERATION TO THE TEXT AND SUBSTANCE SET FORTH IN THE PROPOSAL DOCUMENTS IS ABSOLUTELY PROHIBITED AND WILL RESULT IN THE IMMEDIATE REJECTION OF THE PROPOSAL. If exceptions are taken to the language provided in the Proposal Documents, they must be submitted as an attachment to the Proposal and not by alteration of the original text. Thornton's file copy of this document will be the official and binding version in determining a resolution to any discrepancy in the award or administration of a Purchase Order.

PROPOSAL SUBMITTED BY FACSIMILE ARE NOT ACCEPTABLE AND WILL BE REJECTED UPON RECEIPT. Proposing Vendors will be expected to allow adequate time for delivery of their Proposal either by upload through the Vendor portal of BidNet®, airfreight, postal service, or hand delivery.

## 7) GUARANTEE WITH PROPOSAL

To protect the interests of Thornton, the Proposing Vendor guarantees that the product offered is a standard new product, latest model of regular stock product, with parts regularly used for the type of product offered and also that no attachments or part has been substituted or applied contrary to the manufacturer's recommendations and standard practices.

## 8) USE OF BRAND NAMES IN THE PROPOSAL

Specifications contained herein, in some cases, may refer to brand names. Unless noted otherwise, brand names and numbers are used ONLY to set forth and convey to prospective Proposing Vendors in general the type, style, character, and quality of the product desired.

If the article Proposal upon has a trade or brand name, the trade or brand name shall be shown in the Proposal.

## 9) SPECIFICATION DEVIATIONS BY THE PROPOSING VENDOR

Any deviation from the specifications MUST be noted in detail and submitted in writing with the Proposal. Complete specifications should be attached for any substitutions offered, or when amplifications or clarifications are desirable or necessary. The absence of the specification deviation statement and accompanying specifications will hold the Proposing Vendor strictly accountable to the specifications as written herein. Failure to submit this document of specification deviation, if applicable, shall be grounds for rejection of the item(s) when offered for delivery. If specifications or descriptive papers are submitted with the Proposal, the Proposing Vendor's name should be clearly shown on each document.

The specifications, as listed herein, represent Thornton's estimation of acceptable product; however, Thornton is fully cognizant that no two (2) products from different manufacturers are identical. Therefore, if Proposing Vendor's products are similar and/or same in size, function, and operation, but some of the specifications do not completely coincide with Thornton's, as listed, Proposing Vendor shall list exceptions and explanations separately. Unless the product is identified as being a sole source specification, it is not Thornton's intent to write specifications for a product for which only one (1) manufacturer can submit a Proposal.

## 10) SPECIFICATION CHANGES, ADDITIONS, AND DELETIONS

All changes in specifications made by Thornton, prior to the submission of Proposals, shall be in writing and furnished to ALL Proposing Vendors in an Addendum. Verbal information obtained by Proposing Vendors will NOT be considered, and Proposing Vendors shall not be entitled to rely on verbal information.

## 11) PROPOSAL AMENDMENTS OR WITHDRAWAL REQUESTS

Amendments to or withdrawal requests on Proposals received after the deadline for submitting Proposals will be void regardless of when they were submitted.

## 12) SPECIFICATION CHANGES AFTER AWARD

Any changes in specifications after the award has been made must be with the written consent of Thornton's Purchasing Division.

## 13) PRODUCT

Proposals shall include adequate brochures, latest printed specifications and advertising literature describing the product(s) offered in such fashion as to permit ready comparison with Thornton's specifications on an item-by-item basis, where applicable.

## 14) DELIVERY DATE

The delivery date, as stated in the Proposal, shall be the time required to deliver the product after the receipt of a Purchase Order. Where multiple line items appear in an IFB, the Proposing Vendor shall, unless otherwise stated by Thornton, show the delivery date for each line item separately. If only a single delivery date is shown, it shall mean that all items included in the Proposal can and will be delivered on or before the specified date. The Proposing Vendor certifies that the delivery will be completed on the date it states; provided, however, that the date between the Proposal opening and the placing of the order does not exceed the number of Calendar Days stipulated in the Proposal. Thornton reserves the right to reject any Proposal in which the delivery date indicated may delay the operation for which the product is intended.

## 15) CASH DISCOUNTS

Cash discounts, if offered by the Proposing Vendor, shall be stated in the Proposal. Prices Proposal must however, be based upon payment in thirty (30) Calendar Days after receipt of the invoice. In all cases, cash discounts will be calculated from the date of the invoice or the date of acceptance of the product, whichever is later.

## 16) TIE PROPOSAL

In the case of a tie Proposal, Thornton reserves the right to award based on other factors previously set forth.

## 17) PROPOSAL REJECTION OR PARTIAL ACCEPTANCE

Thornton reserves the right to reject any or all Proposals. Thornton further reserves the right to waive technicalities and informalities in Proposal, as well as to accept, in

whole or in part, such Proposal where it is deemed to be in the best interests of Thornton. Thornton reserves the right to negotiate final terms with the lowest responsive, responsible and trustworthy Proposing Vendor that may vary from those contained in the Proposal Documents.

## 18) PAYMENTS

Thornton normally does not make early or partial payments. Any request for early or partial payment prior to the completion of the entire Purchase Order must be made by the Proposing Vendor in its Proposal. Such request will be given consideration in the evaluation of the Proposal.

## 19) REPAIR MANUALS

Proposals involving electronic, mechanical, or other equipment shall be accompanied by specifications repair manuals showing clearly all pertinent parts, the manufacturer's recommended servicing, and a current repair parts price sheet(s).

## 20) ONE (1) PROPOSAL ACCEPTED

Only one (1) Proposal will be accepted from any one (1) firm, company, partnership or corporation. No second chance or change Proposals will be allowed. If the IFB allows for an alternative Proposal, the Proposing Vendor shall include the alternate Proposal with all other Proposals, no later than the date and time listed within the Schedule of Events, and clearly delineate the separate alternate Proposals from their main Proposal.

## 21) CONFIDENTIAL AND PROPRIETARY INFORMATION

Prior to award, any information contained within the Proposal may be held confidential and proprietary by Thornton, as solely determined by Thornton. After award, the information within the Proposal shall become public information, with the exception of information that has been clearly marked as confidential and proprietary by the Proposing Vendor and provided it complies with the Colorado Open Records Act. Thornton shall be held harmless from any claims arising from the release of confidential and proprietary information not clearly designated as such by the Proposing Vendor and/or not in compliance with the Colorado Open Records Act. In general, it is not acceptable to Thornton to mark information other than financial statements, project financing data, litigation history, or tax audit history as confidential and proprietary. Further, it is not acceptable to mark pricing information as confidential and proprietary. Failure to adhere to these restrictions may result in the Proposal being deemed non-responsive.

Proposing Vendors shall clearly mark such information as confidential and proprietary on each page of their Proposal that contains such information.

## 22) ONE (1) RESPONSE RECEIVED

If an IFB results in only one (1) response, an award will not be finalized until such time that a review of the documents determines that no collusion is evident, and that the IFB was not proprietary in nature.

## 23) LATE PROPOSAL

Proposing Vendors are expected to allow adequate time to upload a complete submission for consideration through the BidNet® Vendor portal. BidNet® will not allow a Vendor to modify, save, nor upload their proposal after the submittal date and time have passed. It is highly recommended that as a proposing Vendor you do not wait until the last minute to submit your proposal.

Late Proposals will not be accepted. Sole responsibility rests with the Proposing Vendor to ensure that its Proposal is completely uploaded through the Vendor portal of BidNet® or are received in the Purchasing Office prior to the submission deadline.

All physical proposals received in the Purchasing Office after the submittal date and time will be immediately rejected without consideration.

## 24) MISTAKES IN PROPOSAL

Prior to the deadline for submission of Proposals, a Proposing Vendor may correct a mistake or withdraw its Proposal. Proposal may be withdrawn provided the request is received prior to the deadline for Proposal submission. All such requests must be in writing via email, and shall state the Proposal number and submittal deadline.

After Proposals are opened, but prior to award, a mistake may be corrected only if it is a mistake in fact and not a mistake in judgment, the intent of the Proposal is obvious, and only if the initial Proposal is in substantial compliance and the correction does not improve the Proposing Vendor's competitive position.

For purposes of clarification, substantial compliance refers to errors that are not material and do not invalidate the legitimacy of the Proposal. Mistakes in form, but not in substance, may be corrected. The low Proposing Vendor will not be permitted to correct a Proposal for errors in judgment.

When a mistake or omission is not evident on the face of the Proposal and prior to award, and the Proposing Vendor points out an error and supplies documentation with clear and objective evidence, the Proposal shall be rejected without correction, and Proposing Vendor’s Security, if any, will not be forfeited.

After the Proposal opening, an otherwise low Proposing Vendor will not be permitted to delete exceptions to the Proposal conditions or specifications which affect price or substantive obligations; however, the Proposing Vendor will be permitted the opportunity to furnish other information called for by the IFB and not supplied due to

oversight, so long as it does not affect responsiveness.

After award, no mistakes may be corrected, and in lieu of Proposal correction, Thornton may permit a low Proposing Vendor alleging a material mistake of fact to withdraw its Proposal when there is reasonable proof that a mistake was made and the intended Proposal cannot be ascertained with reasonable certainty; however, Thornton may, at its sole discretion, retain Proposing Vendor's Proposal Security to compensate for damages which may be incurred in nullifying the award.

Nothing in this section is intended to prohibit Thornton from accepting a voluntary reduction in price from a low Proposing Vendor after the Proposal submission deadline or providing that such a reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the IFB.

## 25) REJECTION OF PROPOSALS

Thornton shall reserve the right to reject any and all Proposals, or any part thereof, and to waive any irregularities or informalities contained in the Proposals. Rejection of Proposals will be based on sound reasoning, and Proposals will not be rejected arbitrarily. The following criteria may be used as a basis for rejection:

a) Non-responsiveness;
b) Non-responsibility;
c) Lack of trustworthiness;
d) Price;
e) Lack of competitiveness;
f) Errors in specifications or indication that revisions would not be to the public advantage;
g) Apparent or suspected collusion;
h) Limits or lack of available funds;
i) Changes in the intended Proposal subsequent to the IFB;
j) Determination that the proposed requirement no longer exists; and/or
k) Fraud.

Additionally, there may be circumstances, as determined by Thornton, under which a Proposal may be adversely affected in its consideration by criteria other than those listed above.

## 26) PROPOSING VENDOR'S REPRESENTATIONS

Each Proposing Vendor by submitting a Proposal represents that:

a) Proposing Vendor has read and understands the IFB and its Proposal is made in accordance therewith.

b) When the Scope of Work or Service or Specifications require performance of any Work or Service on Thornton's site, Proposing Vendor shall have visited the site

and familiarized itself with the local conditions under which the Work or Service is/are to be provided.

c) Proposing Vendor's Proposal is based upon the materials, systems, and equipment described in the IFB without exceptions.

d) Proposing Vendor understands the estimate of quantities given, if any, is to be considered as approximate only and that Thornton does not expressly or by implication represent that the actual amount of product ultimately ordered will correspond therewith. Thornton will not guarantee any minimum order amount.

e) Proposing Vendor shall not, at any time, make claim to any additional payments or consideration on account of any misunderstanding regarding the nature or amount of the product to be provided.

f) Proposing Vendor understands that an increase or decrease in the quantity for any product or in the Scope of Work or Service to be provided, shall not be regarded as grounds for a decrease or increase in unit prices or fees, except when otherwise noted on the Proposal form that in the case of indefinite quantity contracts significant increases or decreases in quantity (defined as a variance of more than twenty-five percent [25%] in any individual item) are subject to re-negotiation of prices.

g) The cost of all appurtenant items, work, material, and equipment not listed separately, not shown on the drawings, or not specified, but necessary to provide the product or Work or Service in accordance with the IFB is included in the Proposal.

h) Prices quoted on each separate product reflect the actual cost to provide the product, and Thornton reserves the right to reject any Proposal in case a Proposal price for an item or items is obviously unbalanced or appears to be so unbalanced as to adversely affect any interest of Thornton.

## 27) EQUAL EMPLOYMENT OPPORTUNITY

The successful Proposing Vendor shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, gender, religion, or physical or mental disability in any policy or practice.

## 28) CONFLICT OF INTEREST

The City Charter and the City Code both contain restrictions on Thornton procuring goods or services from a family member of a Thornton employee, officer, board member, or member of City Council, or from a firm owned by or employing a family member. The restrictions apply if there is an actual conflict of interest or the possible perception by the public of a conflict of interest. Proposing Vendors must disclose any such family relationships or other potential conflicts as soon as the Proposing Vendor

becomes aware of them.

## 29) COMMUNICATIONS WITH THORNTON EMPLOYEES

Thornton maintains control of internal and third party communications during the procurement process to prevent biased evaluations and compromises of confidential information, and to preserve the competitiveness and integrity of the procurement efforts.

Proposing Vendors shall not disclose their pricing to any employees of Thornton other than the contact representative designated in the Proposal Documents. Attempts by Proposing Vendors to establish informal communications channels regarding this procurement will be viewed negatively and may result in rejection of the offending firm's Proposal.

# THORNTON PURCHASE ORDER TERMS AND CONDITIONS

## 1) DEFINITIONS

Bid - The offer of a Bidder, on the prescribed form(s), to provide the product at the prices quoted.

Bidder - An individual, firm or corporation submitting a Bid for the advertised product.

Calendar Day - Each and every day shown on the calendar, beginning and ending at 12:00 midnight.

Day - Unless otherwise defined shall mean Calendar Day.

Owner – Thornton or its designated representative.

Purchase Order – The instrument issued by Thornton to authorize purchases under this procurement.

Vendor – The Party contracting directly with Thornton to furnish and provide all products in accordance with the terms and conditions of the Purchase Order.

## 2) ENTIRE AGREEMENT

Due to the nature of the Procurement, no formal Contract Documents shall be utilized. Upon award, the IFB, the Bid, and the Purchase Order shall constitute the entire agreement between the Parties, unless otherwise stipulated.

## 3) MODIFICATION OF PURCHASE ORDER

No modification shall be binding upon Thornton unless made in writing and signed by the Parties.

## 4) CHANGES

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

## 5) DELIVERY

Delivery must be made within the time agreed upon, but neither Party shall be liable for any default hereunder due to unforeseeable contingencies beyond its control and without its fault or negligence. Vendor's default shall not be excused unless written notice is given to Thornton within five (5) Calendar Days of the time that Vendor first receives knowledge of the occurrence thereof.

## 6) WARRANTIES

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

## 7) OVERSHIPMENTS

Products shipped in excess of the quantity ordered may be returned, at Thornton's sole discretion, and at the Vendor's expense.

## 8) CANCELLATION

Either Party may cancel this Purchase Order in the event that a petition, either voluntary or involuntary, is filed to declare the other party bankrupt or insolvent or in the event that such Party makes an assignment for the benefit of creditors. Thornton may terminate this Purchase Order at any time by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) Calendar Days before the effective date of such termination. In that event, all product furnished by the Vendor shall, at the option of Thornton, become Thornton's property. If the Purchase Order is terminated by Thornton as provided herein, the Vendor shall be paid for the product provided. If the Purchase Order is terminated due to the fault of the Vendor, the provisions governing termination for cause shall apply.

## 9) TERMINATION FOR CAUSE

If, through any cause, the Vendor fails to fulfill in a timely and proper manner its obligations, or if the Vendor violates any of the covenants, agreements or stipulations in the Purchase Order, Thornton shall have the right to terminate the Purchase Order for Cause by giving written notice to the Vendor of such termination and specifying the effective date of the termination. In that event, any product provided may, at Thornton's sole option, become Thornton's property and the Vendor shall be entitled to receive just, equitable compensation for any such product provided, or Thornton may return any product provided to the Vendor at Vendor's expense and Thornton shall have no financial obligation to recompense the Vendor for any costs.

Notwithstanding the above, Vendor shall not be relieved of liability to Thornton for damage sustained by Thornton by virtue of Vendor's breach of the IFB or the Purchase Order terms and conditions, and Thornton may withhold any payments due, or that become due, to the Vendor for the purpose of set off until such time as the exact amount of damages incurred by Thornton is determined.

## 10) NON-APPROPRIATION OF FUNDS

In the event the legislative body of Thornton fails to appropriate funds for the continuation of a multi-term Purchase Order 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 the Purchase Order without penalty and thereupon be released of any further obligations.

## 11) PATENT GUARANTEE

Vendor shall, with respect to any device or composition of Vendor's design or standard manufacture, defend, indemnify and hold harmless Thornton, its employees, officers, agents, and customers, from any costs and damages as finally determined by any court of competent jurisdiction for infringement of any United States Letters Patent, by reason of the sale or normal use of such device or composition.

## 12) ACCEPTANCE OF TERMS BY SHIPMENT

Shipment of all or any portion of the products covered by this Purchase Order shall be deemed an acceptance by the Vendor of the Purchase Order upon the terms, conditions, and prices set forth herein.

## 13) ASSIGNMENT

Vendor shall not assign the Purchase Order, nor any monies due, or that become due, to the Vendor without the prior written consent of Thornton. Any assignment, or attempt at assignment, made without such consent shall be void.

## 14) TAXES

Thornton is exempt from state, federal, municipal, sales, use, and excise taxes. Any such taxes in connection with the Purchase Order shall be paid by Vendor. Vendor will reimburse Thornton and Thornton may charge Vendor, or deduct from any sum due, or that becomes due, any amounts Thornton may be compelled to pay for or on account of any such taxes.

## 15) COMPLIANCE WITH ALL LAWS AND REGULATIONS

All of the product to be provided under this Purchase Order shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the Agency.

## 16) CERTIFICATES OF ORIGIN AND WARRANTIES/GUARANTEES

Certificates of Origin and all warranties/guarantees must be submitted at the time of delivery of the product.

## 17) 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 Service to be performed under this Agreement, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of 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.

## 18) INSURANCE

a) The Vendor agrees to procure and maintain in force during the term of this Purchase Order, at its own cost, the following coverages:

i) 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.

ii) Commercial General Liability Insurance **(MINIMUM LIMITS)**

| | |
|---|---|
| (1) Each Occurrence | $2,000,000 |
| (2) Products/Completed Operations Aggregate | $2,000,000 |
| (3) Personal and Advertising Injury | $2,000,000 |
| (4) General Aggregate | $2,000,000 |

The policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (1) premises-operations; (2) products and completed operations including materials designed, furnished, and/or modified in any way by Vendor; (3) independent subcontractors; (4) contractual liability risk covering the indemnity obligations set forth in this Purchase Order; and (5) 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 the Purchase Order. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of the Purchase Order.

Other insurance, with varying limits which from time to time may reasonably be required by the mutual agreement of Thornton and Vendor against other insurable hazards relating to the product or Work or Services to be provided, shall be provided.

iii) 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 the Vendor's operation, maintenance, use,

loading or unloading of any auto including owned, non-owned, hired, and employee autos.

iv) **If applicable,** Professional liability insurance with minimum limits of five hundred thousand dollars ($500,000) each claim and five hundred thousand dollars ($500,000) general aggregate.

v) Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Thornton and Vendor against other insurable hazards relating to the product or Work or Services to be provided.

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 Thornton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Vendor pursuant. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of the Purchase Order. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of the Purchase Order.

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. Vendor shall prepare a schedule of required coverages for each of its subcontractors and shall submit such schedule to Thornton prior to a subcontractor providing products or Work or Services under this Purchase Order. Such coverages for any subcontractors shall be procured and maintained with forms and insurers acceptable to Thornton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Vendor. The coverage shall not exclude faulty workmanship as a covered occurrence.

c) Vendor shall name Thornton, its officer, agents, and employees as additional insureds with respect to the commercial general liability coverage above. Certificates of Insurance shall be completed and forwarded, along with Additional Insured Endorsements, to Thornton as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Thornton **prior to providing any product or Work or Services under this Purchase Order.** The initial completed Certificate(s) of Insurance and Additional Insured Endorsement(s) shall include the Vendor's e-mail address for future inquiries and updates, and shall be sent to:

City of Thornton
Attention: **Purchasing Analyst of Record from solicitation**
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" and the Project Number in the e-mail subject line.

d) Failure on the part of Vendor or a subcontractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Thornton may immediately terminate this Purchase Order, or at its discretion, Thornton may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies paid by Thornton shall be repaid by Vendor upon demand, or Thornton may offset the cost of the premiums against any monies due, or that become due to Vendor.

e) Thornton 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 Thornton access to any and all insurance policies and endorsements pertaining to this particular Purchase Order.

f) Every policy required above shall be primary insurance and any insurance carried by Thornton, its officers, or its employees shall be excess and not contributory insurance to that provided by Vendor. Vendor shall be solely responsible for any deductible losses under the policies required above.

g) Vendor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Purchase Order 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.

h) The Parties understand and agree that Thornton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Purchase Order, 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.

i) 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 Thornton. The Certificate(s) shall indicate the form used, if any, under which this provision is included.

## 19) CONTEXT AND GENDER

Unless otherwise specified words in the singular number include the plural, and in the plural include the singular. Additionally, words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter may refer to any gender.

## 20) SUBCONTRACTOR TERMS AND CONDITIONS

Vendor shall incorporate all of Thornton's terms and conditions into any agreements that Vendor enters into with subcontractors.

## 21) SETOFF

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

## 22) PROPRIETARY INFORMATION CONFIDENTIALITY- ADVERTISING

Vendor shall consider all information furnished by Thornton to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing 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 contracted to purchase goods or Work or Services from Vendor, nor shall any information relating to the 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.

## 23) PRICE WARRANTY

Vendor warrants that the prices for the goods or Work or Services sold to Thornton under this Purchase Order are not less favorable than those currently extended to any other customer for the same or similar goods or Work or Services in similar quantities. In the event Vendor reduces its price(s) during the term of this Purchase Order, Vendor agrees to reduce the price(s) to Thornton correspondingly. Vendor warrants that price(s) shown on this Purchase Order shall be complete, and no additional charge of any type shall be added without Thornton's express written consent. Such additional impermissible charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

## 24) INSPECTION/TESTING/REVIEW

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

Product rejected or supplied in excess of quantities called for in this Purchase Order 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 product. In the event Thornton receives product whose defects of nonconformity are not apparent on examination, Thornton reserves the right to require replacement, as well as payment of damages.

Thornton shall have the right to require revisions or re-performance of Work or 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.

## 25) SHIPMENT

If in order to comply with Thornton's required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Purchase Order, any increased transportation costs shall be paid for by Vendor without reimbursement by Thornton, unless the necessity for such rerouting or expedited handling has been caused by Thornton.

## 26) WAIVER

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

## 27) LIMITATION ON THORNTON'S LIABILITY

In no event shall Thornton be liable for anticipated profits or for incidental or consequential damages incurred by Vendor. 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 product or Work or Services which gives rise to the claim. Thornton shall not be liable for penalties of any description.

## 28) TIME IS OF THE ESSENCE

Time is of the essence, and if delivery of product or rendering of Work or Services are

not completed by the time promised, Thornton reserves the right, without liability in addition to its other rights and remedies, to terminate this Purchase Order by notice effective when received by Vendor as to product not yet shipped or Work or Services not yet rendered, and to purchase substitute product or Work or Services elsewhere and charge Vendor for any loss incurred.

**29) LAW/VENUE**

The Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado.

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