

**CIP DESIGN AND ENGINEERING MEMORANDUM**  
**#09-03**

January 8, 2009

**TO:** Honorable Mayor Kathleen M. Novak and City Council Members

**FROM:** William A. Simmons, City Manager *WAS*  
Amy Ward, Logistics Center Manager *AW*  
Joliette Woodson, Civil Engineer II *JW*

**SUBJECT:** CR-05-2009, Malley Drive & Highline Drive Traffic Signal and Larson Drive & E. 112<sup>th</sup> Ave. Crosswalk Improvements Project, GMP Contract

**RECOMMENDATION:**

Attached to this memorandum is a Resolution which, if approved would:

- 1) authorize the Mayor to execute a guaranteed maximum price contract between the City of Northglenn and the design build team lead by JR Engineering, LLC (JR) for the design and construction of the Malley Drive & Highline Drive Traffic Signal and the Larson Drive & E. 112<sup>th</sup> Avenue Crosswalk Improvements Project in the amount of \$286,935.00 with a contingency of \$13,065.00;
- 2) authorize the City Manager to approve minor changes in the scope of work and execute relevant change orders up to the approved expenditure limit of \$300,000.00.

The total project cost is \$300,000.00. Staff recommends approval of the proposed Resolution.

**BACKGROUND:**

On October 20, 2008, the City of Northglenn staff advertised a Design/Build Request for Proposal (RFP) for a traffic signal at the intersection of Malley Drive and Highline Drive and in-road warning lights adjacent to the crosswalks at the intersection of East 112<sup>th</sup> Avenue and Larson Drive. The three proposals received, based on the design build team leads, are from Tetra Tech, JR Engineering and Stantec. All of the proposals exceeded the 2009 Project Budget of \$300,000.00. Tetra Tech was the low bidder at a cost of \$330,069.00. However, upon review of the proposals, Staff selected the design build team led by JR Engineering. Justification for the selection is outlined in the attached memorandum dated December 4, 2008.

The cost in the JR Engineering proposal was \$355,269.00. Due to the cost overrun, staff met with the selected team to discuss what changes could be made to the scope that would result in reductions in the project fee while still maintaining the integrity of the project. The project scope was modified as follows:

1. Signal will utilize radio interconnect in place of copper wire interconnect and conduit.
2. All striping will be installed by Public Works Personnel and is thereby removed from the scope.
3. Loop vehicle detectors will be used in place of video cameras.
4. The eastern leg of the crosswalk at Larson Drive will be removed forcing pedestrians to cross in a single location thereby reducing the number of inroad warning lights.
5. The proposed protected left turns from Malley Drive have been removed thereby eliminating the need for 5 section signal heads and video detection. However, a mast arm that can accommodate the additional signal heads will be used if the City decides to add the protected left in the future. Previous review of traffic counts have shown that protected lefts are not needed at this time.
6. Existing signal poles already in Northglenn's inventory and stored at Northglenn's Public Works facility will be used.
7. Existing agreement with Fire District will be utilized to pay for Opticom if needed.

With the modifications of the items above, there is a cost reduction of \$68,334.00 resulting in a project cost of \$286,935.00. City staff recommends that a contract be executed with JR with a fee of \$286,935.00 and a contingency of \$13,065.00 for the construction of the Malley Drive & Highline Drive Traffic Signal and Larson Drive & E. 112<sup>th</sup> Ave. Crosswalk Improvements project. Copies of the bid tabulation and the GMP contract are attached.

**POTENTIAL OBJECTION:**

City Staff is not aware of any specific opposition to the proposed Resolution.

**BUDGET/TIME IMPLICATIONS:**

The budget as proposed for the contract is \$300,000.00. Funding is available in the CDBG Capital Improvements Fund account number 220.69211.3999.197 in the amount of \$235,000 and funding is available in the General Fund account number 410.69211.39999.197 in the amount of \$65,000.

**STAFF REFERENCE:**

Please contact Amy Ward, Acting CIP Design and Engineering Manager at [award@northglenn.org](mailto:award@northglenn.org), or (303) 450-8837.

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-5  
Series of 2009

\_\_\_\_\_  
Series of 2009

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND JR ENGINEERING, LLC FOR THE MALLEY DRIVE AND HIGHLINE DRIVE TRAFFIC SIGNAL AND THE LARSON DRIVE AND E. 112<sup>TH</sup> AVENUE CROSSWALK IMPROVEMENTS PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Agreement between the City of Northglenn and JR Engineering, LLC in the amount of \$286,935.00, with a contingency of \$13,065.00, for a total amount not to exceed \$300,000.00 for the Malley Drive and Highline Drive Traffic Signal and the Larson Drive and E. 112<sup>th</sup> Avenue Crosswalk Improvements Project is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED, at Northglenn, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
SHERI L. PAIZ  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney



11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233-8061  
Phone 303-451-8326  
FAX 303-450-8708  
TDD 303-450-8805

---

## MEMORANDUM

Date: December 4, 2008  
To: William Simmons, City Manager  
From: Joliette Woodson, P.E.  
Subject: **Malley Dr. / Highline Dr. Signal  
E. 112<sup>th</sup> Avenue / Larson Dr. Signal  
Design Build Team Recommendation**

---

### Background

On October 20, 2008, the City of Northglenn staff advertised a Design/Build Request for Proposal (RFP) for a traffic signal at the intersection of Malley Drive and Highline Drive and in-road warning lights adjacent to the crosswalks at the intersection of East 112<sup>th</sup> Avenue and Larson Drive. The three proposals received, based on the design build team leads, are from Tetra Tech, JR Engineering and Stantec. The proposal packages were evaluated by Joliette Woodson, Amy Ward, and Mark Hofmeister (CIP Department) and Norm Bell (Acting Public Works Director). The evaluation criteria were as follows:

Letter of Introduction / Executive Summary (Max 10 points)  
Qualifications of the Project Team (Max 15 points)  
Adherence to Statement of Requirements (Max 10 points)  
Acceptable work schedule and delivery methodology (Max 20 points)  
Overall quality of proposal presented (Max 10 points)  
Cost/Offer – Scope of Work (Max 20 points)  
Success of similar projects (Max 15 points)

### Evaluation Results

Evaluations from the reviewers are attached. JR Engineering Design Build Team received the highest score in three out of the four evaluations. In the fourth evaluation, JR Engineering and Tetra Tech had identical scores. Specific reasons why staff believes JR Engineering is the best suited for the design and construction of this project are specified below:

1. Overall Quality of Proposal – JR Engineering provided conceptual drawings of the intersections. By providing conceptual drawings, JR Engineering has shown that they have evaluated the project in detail. Tetrattech did not provide a conceptual drawing for either location.

2. Cost/Offer – Stantec was eliminated from consideration due to the significant cost overage.
3. Similar Projects – Tetra Tech only identified one traffic project as a similar project. Their project experience is primarily in fiber optic/telecommunications and they have relatively little experience in traffic projects of the type the City of Northglenn is requesting.
4. Familiarity with the City of Northglenn – Tetra Tech has not previously worked with the City of Northglenn though they do have a national presence. The JR Engineering design build team has designed and constructed signal projects for the City of Northglenn previously.
5. Cost savings - J.R. Engineering presented several alternatives for cost savings in their proposal. Though Tetrattech may also have several alternatives in mind, nothing was presented in their proposal.

### **Project Costs**

The cost in the Tetra Tech proposal is \$330,069.00. The cost in the JR Engineering proposal is \$355,269.00. Both cost estimates exceed the 2009 Project Budget of \$300,000.00. Due to the cost overrun, staff will meet with the selected team to discuss reductions in the project fee while still maintaining the integrity of the project. Once the negotiations are complete, the agreement will be presented to City Council for approval. During design, additional value engineering will occur to further reduce the project cost.

Malley Drive / Larson Drive Improvements 11/13/2008  
 Distribution: A. Ward, J. Woodson, M. Hoffmeister, N. Bell  
 RFP SCORES

	\$355,269	\$330,069	\$446,538
Reviewer	JR Engineering	TetraTech	Stantec
Amy Ward	90	70	
Joliette Woodson	96	88	96
Mark Hoffmeister	85	82	77
Norm Bell	74	74	66

High Scores are Highlighted

Malley Drive / Larson Drive Improvements 11/13/2008  
 Distribution: A. Ward, J. Woodson, M. Hoffmeister, N. Bell  
 RFP SCORES

	\$355,269	\$330,069	\$446,538
Consultant	JR Engineering	TetraTech	Stantec
Letter of Introduction / Executive Summary (Max 10 pts)	10	<del>5</del> 5	
Qualifications of the Project Team (Max 15 pts)	15	15	
Adherence to Statement of Requirements (Max 15 pts) 15	15	10	
Acceptable work schedule and delivery methodology (Max 20 pts)	20	15	
Overall quality of proposal presented (Max 10 pts)	10	5	
Cost/Offer - Scope of Work (Max 20 pts)	10	<del>5</del> 15	
Success of similar projects (Max 15 pts)	<del>5</del> 10	5	
Totals:	10 90	0.0 70	0.0 0.0





Malley Drive / Larson Drive Improvements 11/13/2008  
 Distribution: A. Ward, J. Woodson, M. Hoffmeister, N. Bell  
 RFP SCORES

	\$355,269	\$330,069	\$446,538
Consultant	JR Engineering	TetraTech	Stantec
Letter of introduction / Executive Summary (Max 10 pts)	10	<del>10</del>	10
Qualifications of the Project Team (Max 15 pts)	15	14	15
Adherence to Statement of Requirements (Max 10 pts)	15	13	15
Acceptable work schedule and delivery methodology (Max 20 pts)	29	19	19
Overall quality of proposal presented (Max 10 pts)	10	8	9
Cost/Offer - Scope of Work (Max 20 pts)	7	10	0
Success of similar projects (Max 18 pts)	9	8	9
Totals:	10	85	77

COST ↑

\* ONLY

\* qualifications: tetratech should only one traffic PROJECT as similar PROJECT

\* overall quality: No Drawing TETATECH → Difficult to follow

\* Success on similar Projects: only put ONE traffic Project

Malley Drive / Larson Drive Improvements 11/13/2008  
 Distribution: A. Ward, J. Woodson, M. Hoffmeister, N. Bell  
 RFP SCORES

	\$355,269	\$330,069	\$446,538
Consultant	JR Engineering	TetraTech	Stantec
Letter of Introduction / Executive Summary (Max 10 pts)	8	4	6
Qualifications of the Project Team (Max 15 pts)	13	11	11
Adherence to Statement of Requirements (Max 10 pts) 15	12	14	12
Acceptable work schedule and delivery methodology (Max 20 pts)	17	17	17
Overall quality of proposal presented (Max 10 pts)	9	8	7
Cost/Offer - Scope of Work (Max 20 pts)	8	11	5
Success of similar projects (Max 10 pts) 10	7	9	8

Totals:

	0.0	0.0	0.0
	74	74	66

## MEMORANDUM

**To:** Joliette Woodson, P.E.  
**From:** Norm Bell, Acting Director of Public Works  
**Date:** December 2, 2008  
**Subject:** Consultant Selection - RFP 2008 – 37

After thoroughly reviewing the three proposals submitted for RFP 2008-37 "Malley Drive Traffic Signal and Larson Drive & E.112<sup>th</sup> Ave. Crosswalk Improvement Project", I support staff's recommendation to select the team of JR Engineering, WL Contractors and Quality Paving and to negotiate a viable project that meets the desired pedestrian safety improvements and is within the 2009 proposed CIP budget.

Tetra Tech was low bid on the project at \$330,069.00 but the letter of introduction/executive summary was very brief and uninformative. Their project experience is primarily in fiber optic/telecommunications and they have relatively little experience in traffic projects of the type the City of Northglenn is requesting.

JR/WL/Quality was second low bidder at \$355,269.00. WL Contractors has been the City's traffic signal maintenance contractor for many years, has performed numerous signal construction projects in Northglenn and the Denver metropolitan area and is very familiar with all facets of Northglenn's traffic operations. JR Engineering has designed several projects for the City and one of their staff members to be assigned to this project served in the capacity of traffic engineer for the City of Northglenn for a period of several years. Quality paving has also performed many asphalt projects in Northglenn.

Although all bids exceeded the budgeted amount of \$300,000.00, I believe that the team of JR/WL/Quality is best suited to perform the required work and through negotiation, reduction in scope and value engineering in design it is feasible to find significant reductions in project cost and complete this project within the allocated time frame and budgeted funds.

**DESIGN-BUILD CONTRACT**

**Between**

**The City of Northglenn, Colorado**

**And**

**JR Engineering, LLC**

**Date: \_\_\_\_\_, 20\_\_**

## **TABLE OF ARTICLES**

- 1 THE DESIGN-BUILD DOCUMENTS
- 2 WORK OF THE DESIGN-BUILD CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTES
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE DESIGN BUILD DOCUMENTS

## **TABLE OF EXHIBITS**

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

## DESIGN/BUILD TERMS AND CONDITIONS

**DESIGN/BUILD CONTRACT**, dated as of \_\_\_\_\_, 20\_\_\_, by and between the City of Northglenn, Colorado, a Colorado home rule municipality (the "City") and. JR Engineering, LLC (the "Design-Builder").

### **RECITALS**

A. The City has the authority to enter into this agreement pursuant to Section 7.3 of the Northglenn Charter, and, as required by Section 7.3 of the Charter, this agreement has received approval from the City Council and all necessary budgetary appropriations have been made;

B. The City now desires to enter into a single construction contract providing for the design and construction of **Malley Drive & Highline Drive Traffic Signal and Larson Drive & E. 112th Crosswalk Improvement Project**, Northglenn, CO 80233 ("the Project").

C. Design-Builder desires to provide the design and construction services for the Project required by City.

**NOW, THEREFORE**, in consideration of the sums to be paid to Design-Builder by the City, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

### **ARTICLE 1: THE DESIGN-BUILD DOCUMENTS**

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Design-Build Contract between City and Design-Builder (hereinafter, the "Design-Build Contract") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Design-Build Contract; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the City, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the City, if any; other documents listed in this Design-Build Contract; and Modifications issued after execution of this Design-Build Contract. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and City, (2) between the City and a Contractor or Subcontractor, or (3) between any persons or entities other than the City and Design-Builder, including but not limited to any consultant retained by the City to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2)

a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the City.

## **ARTICLE 2: THE WORK OF THE DESIGN-BUILD CONTRACT**

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

## **ARTICLE 3: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Design-Build Contract unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the City. The date of commencement shall be reflected on the Notice to Proceed

§ 3.1.1 If, prior to the commencement of Work, the City requires time to file mortgages, documents related to mechanic's liens and other security interests, the City's time requirement shall be as follows:

N/A

§ 3.2 The Contract Time shall be measured from the date of Notice to Proceed, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

Liquidated damages will occur beginning the first day after completion date, and the Design-Builder will begin incurring liquidated damages at the rate of \$2,000.00 per day.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than  calendar days from the date of Notice to Proceed.

## **ARTICLE 4: CONTRACT SUM**

§ 4.1 The City shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:

*(Check the appropriate box.)*

[ X ] Stipulated sum with Guaranteed Maximum Price in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[ ] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

**§ 4.2 STIPULATED SUM WITH GUARANTEED MAXIMUM PRICE**

§ 4.2.1 The Stipulated sum with Guaranteed Maximum Price shall be two hundred eighty six thousand nine hundred thirty five Dollars (\$ 286,935.00), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated sum with Guaranteed Maximum Price is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the City:

N/A

§ 4.2.3 Unit prices, if any, are as follows:

Exhibit D - Proposal Dated December 29,2008 and  
Exhibit I – Davis Bacon Wages

§ 4.2.4 Allowances, if any, are as follows:

N/A

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated sum with Guaranteed Maximum Price is based, are as follows:

N/A

§ 4.2.6 The Stipulated Sum with Guaranteed Maximum Price includes all costs and fees for design and construction, and is guaranteed by the Design-Builder not to exceed two hundred eighty six thousand nine hundred thirty five Dollars (\$286,935.00). Such maximum sum is referred to in the Design-Build Documents as the Stipulated Sum with Guaranteed Maximum Price. Costs that would cause the Stipulated Sum with Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the City.

N/A

**§ 4.3 COST OF THE WORK PLUS DESIGN BUILDER'S FEE - N/A**

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder s Fee is \_\_\_\_\_.(State a lump sum,



*percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)*

**§ 4.4 COST OF THE WORK PLUS DESIGN BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE - N/A**

**§ 4.4.1 The Cost of the Work is as defined in Exhibit B plus the Design-Builder's Fee**

**§ 4.4.2 The Design-Builder's Fee is \_\_\_\_\_.** *(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)*

**§ 4.4.3 GUARANTEED MAXIMUM PRICE**

**§4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed \_ Dollars (\$) subject to additions and deductions by changes in the Work as provided in the Design Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the City.**

**100% of the savings will be given back to the City of Northglenn**

**§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the City:**

**N/A**

**§4.4.3.3 Unit Prices, if any, are as follows:**

**N/A**

**§4.4.3.4 Allowances, if any, are as follows:**

**N/A**

**§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:**

**N/A**

**§ 4.5 CHANGES IN THE WORK**

**§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.**

§ 4.5.2 Where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the City or Design Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work and the Contract Sum shall be adjusted accordingly.

## **ARTICLE 5: PAYMENTS**

### **§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the City by the Design-Builder, the City shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or as follows:

§ 5.1.3 Provided that an Application for Payment is received not later than the 28th day of the month, the City shall make payment to the Design-Builder not later than the 30th day of the following month. If an Application for Payment is received by the City after the application date fixed above, payment shall be made by the City not later than 30 days after the City receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the City to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder; less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated sum with Guaranteed Maximum Price or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule of values, unless objected to by the City, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the City shall be

entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Design-Build Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

§ 5.1.7 Except with the City's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment that have not been delivered and stored at the site.

**§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM WITH GUARANTEED MAXIMUM PRICE**

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated sum with Guaranteed Maximum Price shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the City of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
3. Subtract the aggregate of previous payments made by the City; and
4. Subtract amounts, if any, for which the City has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the City shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*

2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

N/A

**§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE - N/A**

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

N/A

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows: N/A

1. Take the Cost of the Work as described in Exhibit B;
2. Add the Design-Builder's Fee, less retainage of \_\_\_\_\_ percent ( \_\_\_\_%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2(1) at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Subtract the aggregate of previous payments made by the City;
4. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the City's accountants in such documentation; and
5. Subtract amounts, if any, for which the City has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2(2), if any, shall be as follows: N/A

§ 5.3.4 Except with the City's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than \_\_\_\_\_ percent (\_\_\_\_\_%). The City and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

N/A

**§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE - N/A**

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the City of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of \_\_\_\_ percent (\_\_\_\_%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding

sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Subtract the aggregate of previous payments made by the City;
5. Subtract the shortfall, if any, indicated by the Design-Builder in documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation; and
6. Subtract amounts, if any, for which the City has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the City's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than \_\_ percent (\_\_\_%). The City and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

#### § 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City to the Design-Builder no later than thirty (30) days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

#### ARTICLE 6: DISPUTES

§ 6.1 If the parties do not resolve their dispute through informal negotiations of the sort outlined in A.2.5.1, A.4, A.7.1, and A.7.2 of Exhibit A, Terms and Conditions, the parties shall resort to litigation only by filing an action in the Adams County District Court.

#### ARTICLE 7: MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals, and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in Colorado and are listed as follows:

WL Contractors  
9973 W. 106<sup>th</sup> Avenue  
Westminster, CO 80021

Quality Paving Company  
9700 Alton Way,  
Henderson, CO 80640

§ 7.2 Consultants, if any, engaged directly by the City, their professions and responsibilities are listed below:

N/A

§ 7.3 Separate contractors, if any, engaged directly by the City, their trades and responsibilities are listed below:

N/A

§ 7.4 The City's Designated Representative is:

City of Northglenn  
Joliette Woodson  
Project Manager  
11701 Community Center Drive  
Northglenn, CO 80233

§ 7.4.1 The City's Designated Representative identified above shall be authorized to act on the City's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:

Christopher Hopkins  
JR Engineering, LLC  
7200 S. Alton Way, C100  
Centennial, CO 80112

§7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design Builder's behalf with respect to the Project.

§7.6 Neither the City's nor the Design-Builder's Designated Representative shall be changed without ten (10) days' written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Design-Build Contract to a provision of another Design Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design Build Documents.



§ 7.7.2 Payments due and unpaid under the Design Build Contract shall bear interest from the date payment is due at the rate stated below:

N/A

## **ARTICLE 8: ENUMERATION OF THE DESIGN-BUILD DOCUMENTS**

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Design-Build Contract, are enumerated as follows:

§ 8.1.1 The Design-Build Contract is this executed Design-Build Contract.

§ 8.1.2 The Supplementary and other Conditions of the Design-Build Contract, if any, are as follows:

- Exhibit A – Terms and Conditions
- Exhibit B – Determination of the Cost of the Work
- Exhibit C – Insurance and Bonds
- Exhibit D – Proposal dated
- Exhibit E – Scope of Work dated
- Exhibit F – Schedule of Values dated
- Exhibit G – Insurance Bonds Required
- Exhibit H – Bond Form
- Exhibit I – Labor Rates “Davis Bacon”

§ 8.1.3 The Project Criteria including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the City, consist of the following:

Exhibit E – dated December 29, 2008

§ 8.1.4 The Design-Builder’s Proposal, dated December 29, 2008, consists of the following:

Exhibit D – dated December 29, 2008

§ 8.1.5 Amendments to the Design-Builder’s Proposal, if any, are as follows:

N/A

§ 8.1.6 The Addenda, if any, are as follows:

N/A

§ 8.1.7 Exhibit A, Terms and Conditions.

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:

Original Construction Drawings Dated



**EXHIBIT A**  
to the  
**DESIGN-BUILD CONTRACT**  
Between  
**The City of Northglenn, Colorado**  
And

**JR Engineering, LLC**

**Project: Malley Dr. & Highline Dr. Traffic Signal and Larson Dr. & E. 112<sup>th</sup> Crosswalk  
Improvement Project**

**THE CITY of NORTHGLENN, COLORADO**  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

**THE DESIGN-BUILDER:**  
JR Engineering, LLC  
7200 S. Alton Way, C100  
Centennial, CO 80112

## **TERMS AND CONDITIONS**

### **TABLE OF ARTICLES**

- A.1 GENERAL PROVISIONS**
- A.2 CITY**
- A.3 DESIGN-BUILDER**
- A.4 DISPUTES AND UNFORESEEN CHANGES**
- A.5 AWARD OF CONTRACTS**
- A.6 CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**
- A.7 CHANGES IN THE WORK**
- A.8 TIME**
- A.9 PAYMENTS AND COMPLETION**
- A.10 PROTECTION OF PERSONS AND PROPERTY**
- A.11 INSURANCE AND BONDS**
- A.12 UNCOVERING AND CORRECTION OF WORK**
- A.13 MISCELLANEOUS PROVISIONS**
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

## **ARTICLE A.1: GENERAL PROVISIONS**

### **§ A.1.1 BASIC DEFINITIONS**

#### **§A.1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section 1.1 of the Design-Build Contract.

#### **§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Design-Build Contract and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### **§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Design-Build Contract and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### **§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### **§ A.1.1.6 THE WORK**

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

#### **§ A.1.1.7 THE PROJECT**

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the City or by separate contractors.

### **§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS**

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the City would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the City in writing.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work that complies with such laws, regulations and codes. In such case, the City shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Design-Build Contract and failed to notify the City.

### § A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those that are (1) specifically defined or (2) the titles of numbered articles and identified references to sections in the document.

### § A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement,

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words that have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

### § A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the City and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

### § A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder to the City become the property of the City.

**§ A.1.6.2 RESERVED**

**ARTICLE A.2: THE CITY**

**§A.2.1 GENERAL**

§ A.2.1.1 The City is the City of Northglenn, Colorado, a Colorado home rule municipality, and is referred to throughout the Design-Build Documents as the "City." The term "City" means the City or the City's authorized representative. The City shall designate in writing a representative who shall have express authority to bind the City with respect to all Project matters requiring the City's approval or authorization. The City shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the City.

§ A.2.1.2 The City shall furnish to the Design-Builder, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the City's interest therein.

**§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE CITY**

§ A.2.2.1 Information or services required of the City by the Design-Build Documents shall be furnished by the City with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the City's control shall be furnished by the City after receipt from the Design-Builder of a written request for such information or services.

**§ A.2.2.2 RESERVED**

§ A.2.2.3 The City shall provide, to the extent available to the City, and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The City may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the City.

**§ A.2.2.5 RESERVED**

**§ A.2.2.6 RESERVED**

§ A.2.2.7 If the City observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the City shall give prompt written notice thereof to the Design-Builder.



§ A.2.2.8 The City has appropriated an amount of money equal to or in excess of the Contract Price to be performed under this Design-Build Contract. And the City is prohibited from issuing any Change Order or other form of order or directive requiring additional compensable work to be performed by Contractor, if such directive causes the aggregate amount under the Design-Build Documents to exceed the amount originally appropriated, unless Design-Builder is given written assurance by the City that lawful appropriations to cover the costs of the additional work have been made.

§ A.2.2.9 The City shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 RESERVED

§ A.2.2.11 The City shall obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the City's program.

### § A.2.3 CITY REVIEW AND INSPECTION

§ A.2.3.1 The City shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents. The City's action shall be taken with reasonable promptness.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the City shall take one of the following actions:

1. Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
2. Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals that shall be implemented by a Change in the Work.
3. Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
4. Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
5. Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals that shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the City for the City's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The City shall review each proposed change or deviation to previously approved

documents or submittals that the Design-Builder submits to the City for the City's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the City's responsibility under Section A.2.3.2, the City's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless (a) the Design-Builder has notified the City in writing of the deviation prior to approval by the City or, (b) the City has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The City may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the City shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the City shall not be construed to create an obligation on the part of the City to make on-site inspections to check the quantity or quality of the Work. The City shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The City shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The City shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The City may reject Work that does not conform to the Design-Build Documents. Whenever the City considers it necessary or advisable, the City shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the City nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the City to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The City may appoint an on-site project representative to observe the Work and to have such other responsibilities as the City and the Design-Builder agree to in writing.

§ A.2.3.9 The City shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 CITY'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work that is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails

to carry out Work in accordance with the Design-Build Documents, the City may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Design-Builder or any other person or entity.

#### **§ A.2.5 CITY'S RIGHT TO CARRY OUT THE WORK**

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven (7) -day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may after such seven (7) -day period give the Design-Builder a second written notice to correct such deficiencies within a three (3) -day period. If the Design-Builder within such three (3) -day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the City.

### **ARTICLE A.3: DESIGN-BUILDER**

#### **§A.3.1 GENERAL**

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Design-Build Contract and is referred to throughout the Design-Build Documents as "Design-Builder." The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in Colorado. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

#### **§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES**

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The City understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Design-Build Contract, and in any subsequent Modifications, shall

be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the City upon the City's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the City for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the City pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the City any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the City for City's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the City's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the City. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

1. be consistent with the approved design documents;
2. provide information for the use of those in the building trades; and
3. include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the City periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the City's written approval of construction documents, the Design-Builder, with the cooperation of the City, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the City certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in

the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the City and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the City requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the Design-Builder shall promptly seek execution of those certificates. Yet, neither the Design-Builder, the Architect, nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the City or Design-Builder.

§ A.3.2.11 The Design-Builder shall be responsible to provide surveys, unless required by the Design-Build Documents to be provided by the City, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.3.2.12 The Design-Builder shall secure, at its expense, all necessary building and other permits, licenses and inspections unless the cost of such fees is specifically excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.3.2.13 The Design-Builder shall furnish the services of geotechnical engineers or other consultants, unless required by the Design-Build Documents to be provided by the City, for subsoil, air and water conditions when such services are deemed reasonably necessary by either party to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the City's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the City's review of submittals, such as Shop Drawings, Product Data and Samples, until the City has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the City's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and (1) the City has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the City's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the City on previous submittals. In the absence of such written notice, the City's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the City informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the City and shall not proceed with that portion of the Work without further written instructions from the City.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### **§ A.3.4 LABOR AND MATERIALS**

**§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.**

**§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the City and, if appropriate, in accordance with a Change Order.**

**§ A.3.4.3 The Design Builder shall enforce strict discipline and good order among the Design Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.**

#### **§ A.3.5 WARRANTY**

**§ A.3.5.1 The Design-Builder warrants to the City that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the City, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.**

#### **§ A.3.6 TAXES**

**§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that had been legally enacted on the date of the Design-Build Contract, whether or not yet effective or merely scheduled to go into effect.**

#### **§ A.3.7 PERMITS, FEES AND NOTICES**

**§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Design-Build Contract and that were legally required on the date the City accepted the Design-Builder's proposal.**

**§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.**

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

#### § A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

1. allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2(1) and (2) changes in Design-Builder's costs under Section A.3.8.2(2).

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the City in sufficient time to avoid delay in the Work.

#### § A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the City's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.



§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the City.

#### § A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the City's access and convenience at least one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and at least one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the City upon completion of the Work.

#### § A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the City only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

#### § A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the

site with materials or equipment.

#### § A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor. The Design-Builder shall not unreasonably withhold from the City or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### § A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the City may do so and the cost thereof shall be charged to the Design-Builder.

#### § A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the City access to the Work in preparation and progress wherever located.

#### § A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City harmless from loss on account thereof.

#### § A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the City, City's consultants, officers, employees and agents and their insurers, from and against all liability, claims and demands on account of injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, including but not limited to attorneys' fees, which arises out of or is in a manner connected with this Contract, to the extent that such injury, loss, or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Design-Builder, the Design-Builder's employees,

consultants, subcontractors, or anyone else employed directly or indirectly by the Design-Builder or the Design-Builder's employees, consultants or subcontractors. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 The Design-Builder, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, consultants, employees, agents and their insurers, from and against any such liability, claims or demands at the sole expense of the Contractor, at the option of the City, the Design-Builder agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims or demands. The Design-Builder, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by the Design-Builder, the Architect, Contractor or Subcontractor, for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ A.3.17.4 The indemnification provisions contained in this Section A.3.17 are intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

#### **ARTICLE A.4: DISPUTES AND UNFORESEEN CHANGES**

##### **§ A.4.1 DISPUTES AND UNFORESEEN CHANGES**

§ A.4.1.1 Disputes shall be resolved by the parties informally and by resort to the various procedures outlined in Sections A.2.5.2, A.7.1, and A.7.2. Either party may result to litigation in Adams County District Court if satisfactory informal resolution of disputes is not possible.

§ A.4.1.2 Requests for Additional Cost. If the Design-Builder wishes to request an increase in the Contract Sum, the process outlined in Sections A.7.1 and A.7.2 shall be followed. Prior notice is not required for requests for additional costs relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.3 Requests for Additional Time. If the Design-Builder wishes to make a request for an increase in the Contract Time, the process outlined in Sections A.7.1 and A.7.2 shall be followed. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one request is necessary.

§ A.4.1.4 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or

of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.5 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the City or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.6 Claims for Consequential Damages. Design-Builder and City waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

1. damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.7 If the enactment or revision of codes, laws or regulations or official interpretations that govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder may be entitled to an equitable adjustment in Contract Sum or Contract Time by following the procedures outlined in Sections A.7.1 and A.7.2.

## **ARTICLE A.5: AWARD OF CONTRACTS**

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the City the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The City will reply to the Design-Builder in writing within thirty (30) days stating whether or not the City has objection to any such proposed additional person or entity. Failure of the City to reply within the time allowed shall constitute notice of no objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom or which the City has made timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the City has objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the City has no objection.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the City, after being given notice of the Design-Builder's intent to make such a change, submits an objection to such substitute within thirty (30) days of being given notice thereof.

#### § A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the City provided that:

1. assignment is effective only after termination of the Design-Build Contract by the City for cause pursuant to Section A.14.2 and only for those agreements that the City accepts by notifying the contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Contractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

### **ARTICLE A.6: CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**

#### § A.6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The City reserves the right to perform construction or operations related to the Project with the City's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the City and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the City, the Design-Builder shall make a request for a change as provided in Sections A.7.1 and A.7.2.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the City pursuant to Sections A.6.1.1. and A.6.1.3 The Design-Builder shall provide for coordination of the activities of the City's own forces and of each separate contractor with the work of the City, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so. The Design-

Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors, and the City until subsequently revised.

#### **§ A.6.2 MUTUAL RESPONSIBILITY**

§ A.6.2.1 The Design-Builder shall afford the City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the City or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the City apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The City shall be reimbursed by the Design-Builder for costs incurred by the City that are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The City may, upon agreement by the parties, be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the City or separate contractors.

§ A.6.2.5 The City and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

#### **§ A.6.3 CITY'S RIGHT TO CLEAN UP**

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors, and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the City shall, in its sole discretion, allocate the cost among those responsible.

### **ARTICLE A.7: CHANGES IN THE WORK**

#### **§ A.7.1 GENERAL**

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction

Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the City and Design-Builder. A Construction Change Directive may be issued by the City with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

## § A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the City and Design-Builder stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the adjustment, if any, in the Contract Sum; and
3. the extent of the adjustment, if any, in the Contract Time.

§A.7.2.2 If the City requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for one half of any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

## § A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§A.7.3.1 A Construction Change Directive is a written order signed by the City directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.5;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the City of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the City on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3(3), the Design-Builder shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents costs for the purposes of this Section A.7.3.6 shall be limited to the following:

1. additional costs of professional services;
2. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
3. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
4. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
5. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and



6. additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the City for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the City, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the City shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

§ A.7.3.9 When the City and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The City shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

### **ARTICLE A.8: TIME**

#### § A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Design-Build Contract unless provision is made for the date to be fixed in a notice to proceed issued by the City.

§ A.8.1.3 The date of Substantial Completion is the date determined by the City in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

## **§ A.8.2 PROGRESS AND COMPLETION**

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.1.1 to be furnished by the Design-Builder and City. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the City, the Design-Builder shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **§ A.8.3 DELAYS AND EXTENSIONS OF TIME**

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the City or of a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the City pending resolution of disputes pursuant to the Design-Build Documents, or by other causes that the City determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the City may determine.

§ A.8.3.2 Requests for changes relating to time shall be made in accordance with applicable provisions of Sections A.7.1 and A.7.2.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## **ARTICLE A.9: PAYMENTS AND COMPLETION**

### **§ A.9.1 CONTRACT SUM**

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the City to the Design-Builder for performance of the Work under the Design-Build Documents.

### **§ A.9.2 SCHEDULE OF VALUES**

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum with Guaranteed Maximum Price or the Cost of the Work plus Contractor's Fee

with a Guaranteed Maximum Price, the Design-Builder shall submit to the City an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

#### **§ A.9.3 APPLICATIONS FOR PAYMENT**

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the City an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the City may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work that have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT**

§ A.9.4.1 The City shall, within seven (7) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the City has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### § A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The City may withhold a payment in whole or in part to the extent necessary to protect the City due to the City's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The City may also withhold a payment because of subsequently discovered evidence, or may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the City from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of, but not limited to, the following:

1. defective Work not remedied;
2. third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Design-Builder;
3. failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the City or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed to the City's satisfaction, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the City has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the City shall make payment of the amount, in the manner and within the time provided, in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and

other consultants retained directly by the Design-Builder, upon receipt of payment from the City, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the City, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The City shall have no obligation to pay or to see to the payment of money to an Architect, design professional, consultant, or Contractor, except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4,

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the City with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the City.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the City does not issue a payment within the time period required by Section 5.1.3 of the Design-Build Contract, then the Design-Builder may, upon seven (7) additional days' written notice to the City, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the City can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof that the City agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the City a comprehensive list of items to be completed or corrected prior to final

payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the City shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City's inspection discloses any item, whether or not included on the Design-Builder's list, that is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the City to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved by informal negotiations of the parties or pursuant to the processes outlined in Sections A.7.1 and A.7.2.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the City's signature an Acknowledgement of Substantial Completion which, when signed by the City, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the City and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the City's inspection discloses that the Work or a designated portion thereof is substantially complete, the City shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the City as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the

Work shall be determined by written agreement between the City and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the City and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City shall promptly make such inspection and, when the City finds the Work acceptable under the Design-Build Documents and fully performed, the City shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the City (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the City. If a Contractor refuses to furnish a release or waiver required by the City, the Design-Builder may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the City all money that the City may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the City determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the City shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the City except for those claims arising from the following or similar issues:

1. liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
2. failure of the Work to comply with the requirements of the Design-Build Documents; or
3. terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE A.10: PROTECTION OF PERSONS AND PROPERTY**

### **§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS**

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

### **§ A.10.2 SAFETY OF PERSONS AND PROPERTY**

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
3. other property at the site or adjacent thereto, such as, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.



§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1(2) and A.10.2.1(3) caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1(2) and A.10.2.1(3). The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the City a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### §A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City.

§ A.10.3.2 The Design-Builder shall obtain the services of a licensed laboratory satisfactory to the City to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Design-Builder shall furnish in writing to the City the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The City shall promptly reply to the Design-Builder in writing stating whether or not the City objects to the persons or entities proposed by the Design-Builder. If the City has an objection to a person or entity proposed by the Design-Builder, the City shall propose another to whom the City has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the City and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.4 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the City shall indemnify the

Design-Builder for one half of all cost and expense thereby incurred.  
§ A.10.5 RESERVED

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined by consultation with the City according to the process outlined in Sections A.7.1 and A.7.2.

**ARTICLE A.11: INSURANCE AND BONDS**

§ A.11.1 Except as may otherwise be set forth in the Design-Build Contract or elsewhere in the Design-Build Documents, the City and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.1.1.

§A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in Colorado such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor, or by anyone directly or indirectly employed by the Design-Builder, the Design-Builder's Contractors or employees, or by anyone for whose acts the Design-Builder or the Design-Builder's Contractors or employees are liable. Specifically, the Design Builder shall obtain and maintain during the life of this Design-Build Contract insurance to cover:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance or use of a motor vehicle;

7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Any information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be promptly furnished to the City by the Design-Builder. Design-Builder shall not be relieved of any liability, claims, demands or other obligation assumed pursuant to Section A.3.17 by reason of its failure to obtain and maintain during the life of this Contract, insurance in sufficient amounts, durations or types.

### § A.11.3 CITY'S LIABILITY INSURANCE

§ A.11.3.1 The City shall be responsible for purchasing and maintaining the City's usual liability insurance.

### § A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the City shall be responsible for purchasing and maintaining the City's usual liability insurance.

### A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The City shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Design-Build Contract or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

## **ARTICLE A.12: UNCOVERING AND CORRECTION OF WORK**

### **§ A.12.1 UNCOVERING OF WORK**

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents; it must be uncovered for the City's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered that the City has not specifically requested to examine prior to its being covered, the City may request to see such Work, and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense.

### **§ A.12.2 CORRECTION OF WORK**

#### **§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the City or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

#### **§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION**

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one (1) year after the date of Substantial Completion, or after the date for commencement of warranties established under Section A.9.8.5, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Design-Builder a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the City fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the City waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty, unless discovery of the condition was not possible or reasonable within the one-year period. If the Design-Builder fails to correct non-conforming Work promptly and to the City's satisfaction after receipt of notice from the City, the City may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the City.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to ~~other obligations the Design-Builder might have under the Design-Build Documents~~. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### § A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the City prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

### **ARTICLE A.13: MISCELLANEOUS PROVISIONS**

#### § A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the state of Colorado.

#### § A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The City and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The City may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the City's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

#### § A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

#### § A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the City or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the City may be present for such procedures.

§ A.13.5.2 If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the City shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Design-Builder shall give timely notice to the City of when and where tests and inspections are to be made so that the City may be present for such procedures. Except as provided in Section A.13.5.3, the City shall pay one half of such costs.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of

repeated procedures, shall bear the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the City.

§ A.13.5.5 If the City is to observe tests, inspections or approvals required by the Design-Build Documents, the City will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the City and Design-Builder:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
3. After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or City, whichever occurs last.

#### § A.13.7 ILLEGAL ALIENS

§ A.13.7.1 Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who

are newly hired for employment to perform work under the Contract.

**§ A. 13.7.2 Prohibited Acts. Contractor shall not:**

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
2. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

**§ A. 13.7.3 Verification.**

1. If Contractor has employees Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program or the Department Program.
2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:
  - a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and
  - b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

**§ A.13.7.4 Duty to Comply with Investigations.** Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

**§ A.13.7.5** If Contractor does not currently employ any employees, Contractor shall sign the "No Employee Affidavit" attached hereto.

**§ A.13.7.6** If Contractor wishes to verify lawful presence of newly hired employees who



perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

## **ARTICLE A.14: TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

### **§ A.14.1 TERMINATION BY THE DESIGN-BUILDER**

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. an act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. the City has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence of proper budget appropriations as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the City, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon thirty (30) days' written notice to the City, terminate the Design-Build Contract and recover from the City payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a director indirect contract with the Design-Builder because the City has persistently failed to fulfill the City's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon thirty (30) additional days' written notice to the City, terminate the Design-Build Contract and recover from the City as provided in Section A.14.1.3.

**§ A.14.2 TERMINATION BY THE CITY FOR CAUSE**

**§ A.14.2.1 The City may terminate the Design-Build Contract if the Design-Builder:**

1. fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
3. disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
4. is otherwise guilty of breach of a provision of the Design-Build Documents.

**§ A.14.2.2 When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:**

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
2. accept assignment of contracts pursuant to Section A.5.5.1; and
3. finish the Work by whatever reasonable method the City may deem expedient. Upon request of the Design-Builder, the City shall furnish to the Design-Builder an accounting of the costs incurred by the City in finishing the Work.

**§ A.14.2.3 When the City terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.**

**§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the City and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the City.**

**§ A.14.3 SUSPENSION BY THE CITY FOR CONVENIENCE**

**§ A.14.3.1 The City may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.**

**§ A.14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and**

time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

#### **§ A.14.4 TERMINATION BY THE CITY FOR CONVENIENCE**

**§ A.14.4.1** The City may, at any time, terminate the Design-Build Contract for the City's convenience and without cause.

**§ A.14.4.2** Upon receipt of written notice from the City of such termination for the City's convenience, the Design-Builder shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

**§ A.14.4.3** In the event of termination for the City's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the City's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR  
CONTRACTING WITH AN ILLEGAL ALIEN**

FROM: \_\_\_\_\_  
(Prospective Contractor)

TO: City of Northglenn  
PO Box 330061  
11701 Community Center Drive  
Northglenn, CO 80233

Project Name \_\_\_\_\_

Bid Number \_\_\_\_\_ Project No. \_\_\_\_\_

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Prospective Contractor \_\_\_\_\_

By: \_\_\_\_\_

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

<b>Finance Dept Use Only</b>	
Initials	_____
Date	_____
PO #	_____

**NO EMPLOYEE AFFIDAVIT**

**1. Check and complete one:**

I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_ . I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**OR**

I, \_\_\_\_\_, am an owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity-i.e, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

I, \_\_\_\_\_, am a United States citizen or legal permanent resident.

*The City must verify this statement by reviewing one of the following items:*

- o *A valid Colorado Driver's license or a Colorado identification card*
- o *A United States military card or a military dependent's identification card*
- o *A United States Coast Guard Merchant Mariner card*
- o *A Native American tribal document or*
- o *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card*
- o *Any other documents or combination of documents listed in the City's "Acceptable Documents for Lawful Presence Verification" chart that prove both the contractor's citizenship/lawful presence and identity.*

**OR**

I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal systematic alien verification of entitlement program, the "SAVE" program, and provide such verification to the City.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Finance Dept Use Only**

Initials \_\_\_\_\_

Date \_\_\_\_\_

PO # \_\_\_\_\_

**DEPARTMENT PROGRAM AFFIDAVIT**

**(To be completed if Contractor participates in the Department of Labor Lawful Presence Verification Program)**

I, \_\_\_\_\_, as a public contractor under contract with the City of Northglenn (the "City"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Contract") with the Town within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Contract; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Contract.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

## **ACCEPTABLE DOCUMENTS FOR LAWFUL PRESENCE VERIFICATION**

### **Documents that Serve to Prove Citizenship/Lawful Presence and Identification:**

- Colorado Driver's License or Identification Card
- Out of State drivers license from: AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NJ, NY, ND, OH, OK, PA, RI, SC, SD, VA, WV, WY
- A United States Military Card of a Military Dependent's Identification Card
- A United States Coast Guard or Merchant Mariner Card
- A Native American Tribal Document
- Certificate of Naturalization with Photograph
- Certificate of U.S. Citizenship with Photograph
- U.S. Passport (less than 5 years old)
- Northern Mariana Identification Card with Photograph

**OR**

### **Documents that Only Serve to Prove Citizenship/Lawful Presence:**

- U.S. Birth Certificate
- Certification of Report of Birth from Department of State
- Report of Birth Abroad of a U.S. Citizen
- U.S. Citizen Identification Card
- Final Adoption Decree
- Evidence of U.S. Civil Service Employment before June 1, 1976
- Statement Provided by U.S. Consular Officer Certifying Citizenship
- Religious Records Recorded in the 50 states, D.C., or a U.S. Territory Showing Birth Date or Child's Age and Location of Birth in U.S.
- Early School Records
- Census Records
- Other Documents that Establish a U.S. Place of Birth or in Some Way Indicates U.S. Citizenship

**AND**

### **Documents that Serve to Prove Identification:**

- A Driver's License or Identification Card Regardless of the State of Issuance
- School Identification Card with Photograph
- Identification Card Issued by Federal, State or Local Government
- A Driver's License Issued by a Canadian Government Authority

**EXHIBIT B**  
to the  
**DESIGN-BUILD CONTRACT**  
Between  
**The City of Northglenn, Colorado**  
And  
**JR Engineering LLC**

Project: Malley Dr.& Highline Dr. Traffic Signal and Larson Dr. & E. 112<sup>th</sup> Crosswalk Improvement Project

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

THE DESIGN-BUILDER:  
JR Engineering, LLC  
7200 S. Alton Way, C100  
Centennial, CO 80112

Determination of the Cost of the Work – N/A

**ARTICLE B.1: CONTROL ESTIMATE**

§ B.1.1 Where the Contract Sum is the Cost of the Work, plus the Design-Builder's Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Design-Build Contract, the Design-Builder shall prepare and submit to the City prior to the Design-Builder's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee. The Control Estimate shall be used to monitor actual costs.



§ B.1.2 The Control Estimate shall include:

1. the documents enumerated in Article 8 of the Design-Build Contract, including all Addenda thereto and the Terms and Conditions of the Contract;
2. a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Design-Builders Fee; and
3. contingencies for further development of design and construction.

§ B.1.3 The Design-Builder shall meet with the City to review the Control Estimate, in the event that the City discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the City, the City shall acknowledge its acceptance in writing. The City's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ B.1.4 The Design-Builder shall develop and implement a detailed system of cost control that will provide the City with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the City, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

## **ARTICLE B.2: COSTS TO BE REIMBURSED**

### **§ B.2.1 COST OF THE WORK**

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Article B.2.

### **§ B.2.2 LABOR COSTS**

§ B.2.2.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the City's approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the City's approval.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

### § B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

### § B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City's property at the completion of the Work or, at the City's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work.

### § B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ B.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the City.

#### § B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

#### § B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents and that do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design process or product required by the Design-Build Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents, and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the City's consent. However such costs of legal defenses judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents then they shall not be included in the Cost of the Work

§ B.2.7.6 Data processing costs related to the Work

#### § B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

### **ARTICLE B.3: COSTS NOT TO BE REIMBURSED**

§ B.3.1 The Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses except as may be expressly included in Article B 2 of this Exhibit

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Design-Build Contract, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them maybe liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

**ARTICLE B.4: DISCOUNTS, REBATES AND REFUNDS**

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the City if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the City, or (2) the City has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2 Amounts that accrue to the City in accordance with the provisions of Section B.4.1 shall be credited to the City as a deduction from the Cost of Work.

**ARTICLE B.5: CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER**

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The City may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the City. The City shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the City's prior consent.

**ARTICLE B.6: ACCOUNTING RECORDS**

§ B.6.1 The Design-Builder or any affiliated person or entity that performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design-Build Contract, and the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Design-Build Contract, and the Design-Builder shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Design-Build Contract has been fully performed, the Design-Builder shall deliver to the City's accountant a final accounting of the Cost of the Work.

§ B.6.3 The City's accountants will review and report in writing on the Design-Builder's final

accounting within thirty (30) days after delivery of the final accounting. Based upon such Cost of the Work as the City's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Design-Build Contract have been met, the City will, within twenty-one (21) days after receipt of the written report of the City's accountants, notify the Design-Builder in writing of the City's intention to make final payment or to withhold final payment.

§ B.6.4 If the City's accountants report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Design-Build Contract and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to initiate resolution of the dispute within sixty (60) days, the substantiated amount reported by the City's accountants shall become binding on the Design-Builder.

§ B.6.5 If, subsequent to final payment and at the City's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the City shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Design-Build Contract, the amount of such savings shall be recalculated and appropriate credit given to the City in determining the net amount to be paid by the City to the Design-Builder.

**EXHIBIT C**  
to the  
**DESIGN-BUILD CONTRACT**  
Between  
**The City of Northglenn, Colorado**  
And  
**JR Engineering, LLC**

**Project:**

Malley Dr.& Highline Dr. Traffic Signal and Larson Dr. & E. 112<sup>th</sup> Crosswalk Improvement Project

**THE CITY of NORTHGLENN, COLORADO**  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

**THE DESIGN-BUILDER:**  
JR Engineering, LLC  
7200 S. Alton Way, C100  
Centennial, CO 80112

**Insurance and Bonds**

**ARTICLE C.1**

The City and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

Per Exhibit G

**ARTICLE C.2**

The Design-Builder shall provide surety bonds as follows:

Payment, Performance, Maintenance and Warranty Bond per Exhibit H

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Design-Build Contract, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ENCLOSURE**

**MALLEY DRIVE AND HIGHLINE DRIVE TRAFFIC SIGNAL:**

<b>1. Project Design Phase:</b>	
Survey Work.....	\$ <u>3,500.00</u>
Traffic Signal and Roadway Design.....	\$ <u>5,500.00</u>
Dry Utility/High Line Canal Coordination.....	\$ <u>2,000.00</u>
Farmers High Line Canal Permit Fee.....	\$ <u>1,500.00</u>
Legal Description for Right-of-Way.....	\$ <u>1,000.00</u>
Preliminary Construction Plans .....	\$ <u>4,000.00</u>
<b>Design Phase Total Fee</b>	<b>\$ <u>17,500.00</u></b>
<b>2. Project Construction Phase:</b>	
Schedule A Signal/Roadway Improvements .....	\$ <u>193,495.00</u>
Construction Staking.....	\$ <u>4,000.00</u>
Construction Management.....	\$ <u>18,000.00</u>
Materials Testing .....	\$ <u>3,000.00</u>
Asbuilts/Final Closeout.....	\$ <u>4,000.00</u>
<b>Construction Phase Total Fee</b>	<b>\$ <u>222,495.00</u></b>
<b>SUBTOTAL</b>	<b>\$ <u>239,995.00</u></b>

**112<sup>TH</sup> AVENUE AND LARSON DRIVE CROSSWALK IMPROVEMENTS:**

<b>1. Project Management and Construction Phase:</b>	
Schedule B Crosswalk Improvements.....	\$ <u>44,940.00</u>
Construction Management and Coordination.....	\$ <u>2,000.00</u>
<b>SUBTOTAL</b>	<b>\$ <u>46,940.00</u></b>
<b>TOTAL LUMP SUM NOT-TO-EXCEED FEE</b>	<b>\$ <u>286,935.00</u></b>

*The Total Lump Sum fee for is a guaranteed maximum price for the scope of services contained in this proposal. Please refer to the enclosed Preliminary Design Plans and Schedule of Values for construction cost details.*



The following assumptions were used in developing the total project fee. Should any of these assumptions not be consistent with the needs or expectations of the City of Northglenn, JR encourages additional discussion to revise the approach, scope, or other details associated with this proposal to meet the City's goals and budget:

**Design Assumptions:**

1. The proposed traffic signal consists of two signal poles with dual-mast arms of 30', 35' and 40' lengths. Foundations will match City of Northglenn Standards. The Team will use two existing poles, and two 35' mast arms currently being installed at the City's maintenance facility.
2. Site observations by JR Engineering indicate that no areas of potential wetlands or riparian environments exist within the project limits. Therefore, a cost has not been included to provide Environmental Services or obtain a wetland disturbance permit.
3. JR Engineering has assumed that additional right-of way or construction easement will need to be secured for the southwest corner of the intersection. We have therefore included the fee for one legal description. We have assumed that the City will provide for land appraisals, negotiations, or legal fees that may be required to acquire the easements and right-of-way. However, JR can provide these additional services if requested.
4. To facilitate the design/build process JR Engineering has assumed that preliminary construction plans will be sufficient to begin construction. If additional construction plans are required prior to construction or to secure approvals, the above fee and schedule may need to be adjusted.
5. JR Engineering has included \$1,500 for the assumed Farmer's High Line Canal permit fee. We have assumed that the City will waive all fees associated with City permits.
6. JR has assumed that traffic signal equipment will be allowed, with agreement, to be placed within the High Line Canal right-of-way and that legal descriptions will not be required.
7. We have assumed that traffic volume counts, a traffic study, and a traffic signal warrant study will not be required for the project.

**Construction Assumptions:**

1. All construction will generally comply with City of Northglenn regulations and construction specifications. If traffic signal work is not specifically covered within City regulations, then *WL* will generally construct the improvement to industry standards and City of Thornton signal specifications.
2. The proposed design assumes that all concrete curb, gutter and crosspans will be removed to a neat line and that asphalt patching will not be required.
3. Erosion control blankets will not be required, expect where slopes exceed 3:1.
4. One lane traffic on 112<sup>th</sup> Avenue will permitted with flaggers during installation of the Spot Devices in-road lighting.

*Item 201 Clearing & Grubbing* Bid price does not include excavation of rock. The



Team has assumed that existing topsoil will be striped and redistributed on the areas disturbed by construction and that import of topsoil will not be required for disturbed areas.

**Item 212 Seeding.** The Team has assumed that native seeding will be sufficient for restoration of disturbed areas. We have not included a price for sod or additional landscaping.

**Item 306 Subgrade Reconditioning** The Team proposes to recondition the top twelve inches to achieve the desirable moisture-density.

**Item 61-00200 PVC Conduit** The Team has assumed that the signal will require 1-3" and 2-2" PVC conduits between pull boxes.

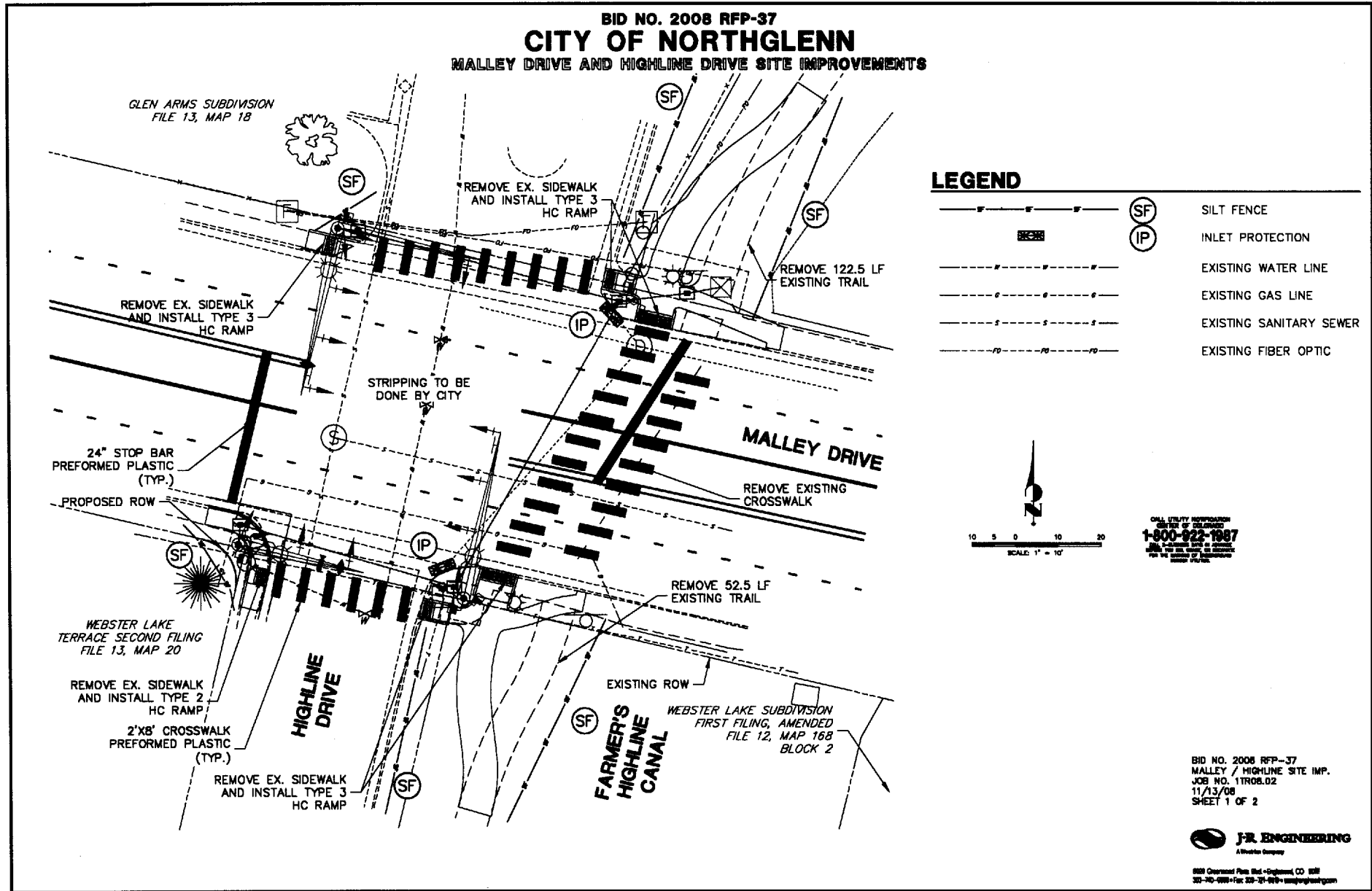
**Item 613 Electric Service to Controller** The Team has assumed that power will be available within 100' of the intersection. The Team has included a cost to coordinate with Xcel for a power source. We have not included fees for any work that Xcel may charge the City if an additional transformer or meter are required to supply power.

**Item 614-00035 Overhead Mounted Street Name Sign** The Team has assumed that overhead street name signs will be metal sign panels, and not illuminated signs. However, these can be provided upon request.

**Item 614-87496 Signal Interconnect** The Team has assumed that the City desires to use radio interconnect.

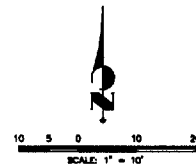
**Item 629 Traffic Control.** We have assumed that the adjacent street can be utilized in the detour. We have not included a price for variable message boards.

BID NO. 2008 RFP-37  
**CITY OF NORTHGLENN**  
**MALLEY DRIVE AND HIGHLINE DRIVE SITE IMPROVEMENTS**



**LEGEND**

- (SF) SILT FENCE
- (IP) INLET PROTECTION
- EXISTING WATER LINE
- EXISTING GAS LINE
- EXISTING SANITARY SEWER
- EXISTING FIBER OPTIC



CALL UTILITY DEPARTMENT  
 CENTER OF CALIFORNIA  
**1-800-922-1987**  
CALL TO VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES BEFORE ANY EXCAVATION WORK IS DONE.

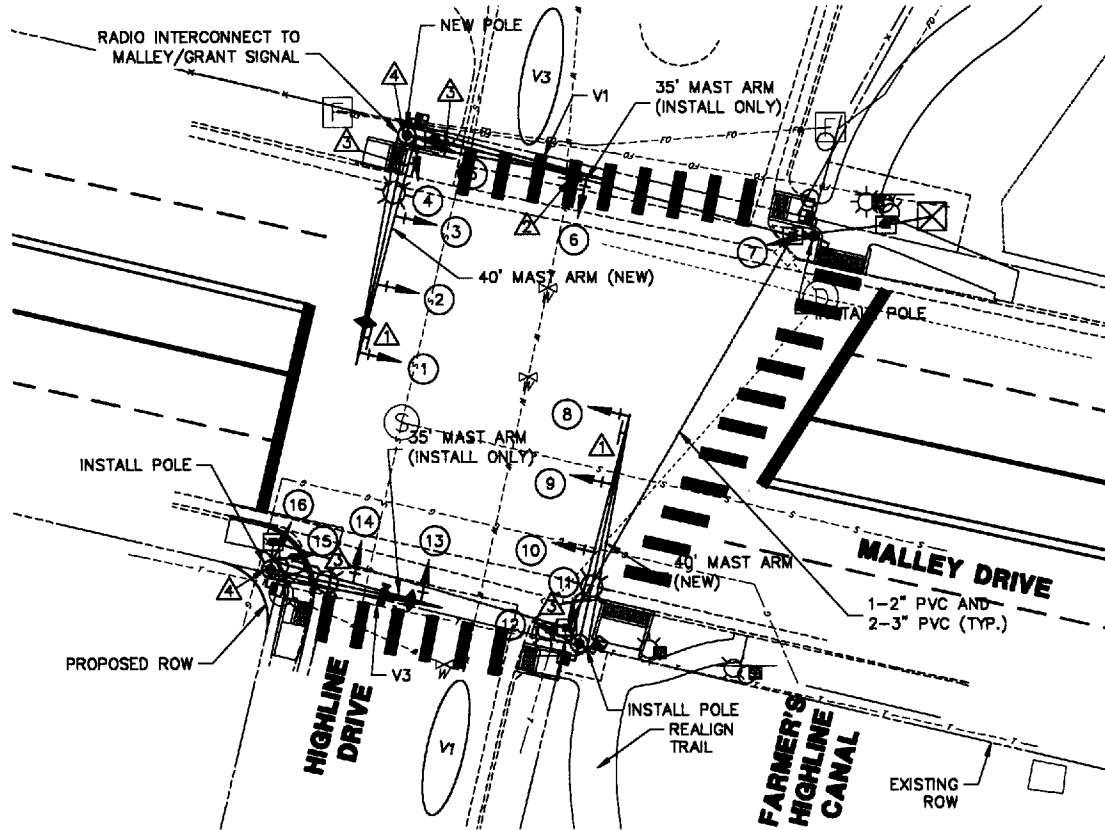
BID NO. 2008 RFP-37  
 MALLEY / HIGHLINE SITE IMP.  
 JOB NO. 1TR08.02  
 11/13/08  
 SHEET 1 OF 2



888 Overland Park Blvd • Englewood, CO 80150  
 303-760-0888 • Fax: 303-761-8199 • www.jr-engineering.com

S:\PROPOSAL\2008\08532-1000 North Glenn - Malley Dr Traffic Signal, E. 112th Ave\TEMP PROJECT\DRAWINGS\BLS.dwg, \$I, 12/23/2008 10:57:45 AM, Henry.dwg

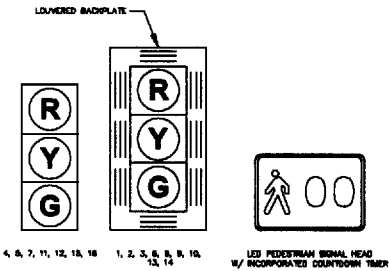
**BID NO. 2008 RFP-37  
CITY OF NORTHGLENN  
MALLEY DRIVE AND HIGHLINE DRIVE TRAFFIC SIGNAL**



**LEGEND**

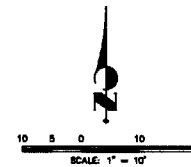
	TRAFFIC SIGNAL MAST ARM W/ LUMINAIRE
	TRAFFIC SIGNAL POLE FOUNDATION
	PERIMETER POLE FOUNDATION
	TRAFFIC SIGNAL CONTROLLER
	MEDIUM PULL BOX
	PVC CONDUIT
	SIGNAL HEAD WITHOUT BACK PLATE
	SIGNAL HEAD WITH BACK PLATE
	PEDESTRIAN SIGNAL HEAD W/ PUSH BUTTON & R10-38 SIGN
	VEHICLE DETECTION CAMERA
	OPTICOM DETECTOR

**TRAFFIC SIGNAL HEADS**



• ALL VEHICLE SIGNAL HEADS SHALL BE POLYCARBONATE WITH 13-INCH SECTIONS AND TUNNEL VESSEL  
• ALL RED, YELLOW AND GREEN 'BALL AND ARROW' VEHICLE INDICATORS AND ALL PEDESTRIAN SYMBOL INDICATORS SHALL BE APPROVED LED TYPE

**TRAFFIC SIGNS**



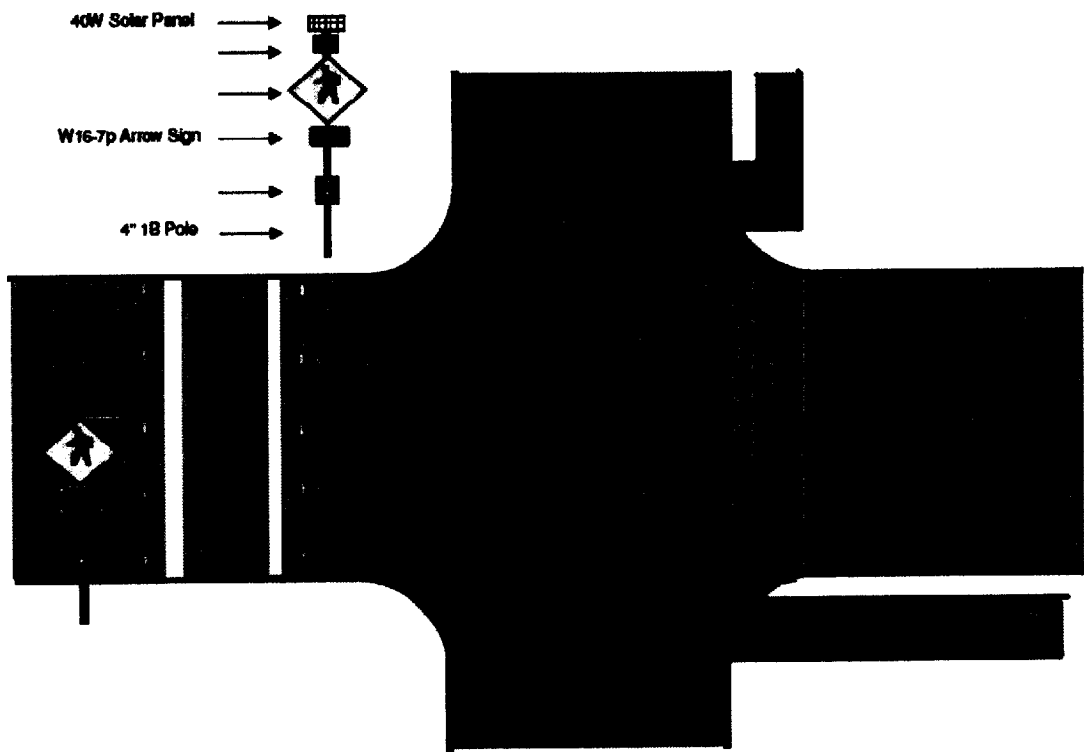
CALL UTILITY INSPECTION  
CENTER OF CALIFORNIA  
**1-800-922-1967**  
FOR THE LATEST STATE OF CALIFORNIA  
UTILITY LOCATING AND MARKING  
STANDARD PRACTICES.

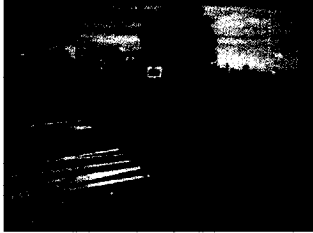
BID NO. 2008 RFP-37  
MALLEY / HIGHLINE SIGNAL  
JOB NO. 11TR08.02  
11/13/08  
SHEET 2 OF 2

**J-R ENGINEERING**  
A Whittier Company

488 Overland Park Blvd., Englewood, CO 80110  
303-740-8388 • Fax: 303-751-0933 • www.jr-engineering.com

## E 112th Avenue @ Larson Lane Crosswalk Layout





**EXHIBIT - SUMMARY OF PROJECT DESCRIPTION**

The City of Northglenn desires to improve pedestrian safety at the Malley Drive and Highline Drive intersection, and the 112<sup>th</sup> Avenue and Larson Drive intersection, and has chosen a design/build project delivery method. The design/build procedure will provide the City with a single point of contact responsible for the project from initial project coordination through final construction. The design/build method will also facilitate the construction schedule and provide for completion of the project with a fast track solution.

To improve pedestrian safety, the City of Northglenn has chosen to install a traffic signal at the intersection of Malley Drive and Highline Drive. Malley Drive provides a connection from 112<sup>th</sup> Avenue to the I-25 overpass. Highline Drive is a local street that intersects Malley Drive and parallels the Farmer's High Line Canal and attached regional trail. Currently the Highline Canal and trail cross Malley Drive just east of the Highline Drive intersection. The existing geometry of the intersection makes it unclear where traffic should yield to pedestrians. The trail will be realigned and combined with a new traffic signal to control traffic and provide a safe pedestrian crossing.

The City of Northglenn also desires to improve the pedestrian safety at the intersection of 112<sup>th</sup> Avenue and Larson Drive by installing in-road warning lights, and flashing crosswalk warning signs.

With the intent of design/build in mind, JR has formed an outstanding team to design and construct this project. JR Engineering, **WL Contractors**, and **Quality Paving**, along with our subconsultants, have invested a significant amount of resources preparing the field investigations, site survey, preliminary design, and bid cost for this proposal. As a team we have worked on this project in the true spirit of design/build. We are comfortable that we have designed a cost effective plan and the design plans and construction scope meet the requirements of the City of Northglenn. We are prepared to deliver the project within the proposed bid price and project schedule.

JR Engineering operates as a designer-led design builder and provides our clients a single point of contact from project conception, design, and through out construction; thereby insuring that the original design intent is accomplished in the field. *The same qualified engineer that works with you to develop the project concept and preliminary design will also coordinate directly with our contractors, provide construction management, oversee quality control, and continually update the City on the progress of the project.*

When reviewing a design-build prospect our first step is to select the qualified and skilled contractors necessary to complete the work. JR Engineering has developed valuable contractor relationships during our 10-year history of delivering successful



design-build projects; and we have selected both **WL Contractors** and **Quality Paving** for their experience in working with the City of Northglenn and for our recent success providing design-build projects.

➤ **Construction Schedule**

We understand that the City desires the project to be complete by August of 2009 and have reviewed the project requirements, site conditions, and performed a preliminary design. The Design/Build process will effectively reduce the required design time and allow JR Engineering the ability to coordinate the design, permitting, approvals, and construction efforts, to meet this critical schedule.

JR Engineering has already performed a site survey and preliminary design, to insure that construction can begin as soon as possible following a Notice to Proceed and City review. JR will place a priority on placing the order for the traffic signal poles and mast arms to allow for a possible 18 week lead time and keep the project schedule maintained. *Based on our preliminary design work and review of the project conditions our Team believes that we can complete the project at least three months ahead of the City's proposed schedule, if desired by the City.* The JR Engineering, **WL Contractors**, and **Quality Paving** team has a proven record of being able to successfully complete similar projects with aggressive construction schedules.

➤ **Cost Effective Construction Solutions and Construction Alternatives to Meet the City Budget**

JR Engineering has reviewed the project site and begun to formulate a preliminary design that would achieve improved pedestrian safety. JR has invested a significant amount of time exploring existing utilities, available right-of-way, design alternatives and understanding the concerns of the existing intersection. During the project JR Engineering will continue to develop design solutions. Please see the conceptual traffic signal design layout in the appendix of this proposal for further detail.

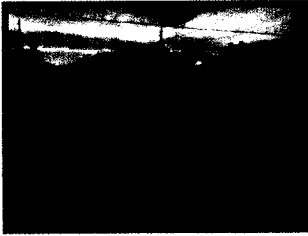
The Design/Build process allows JR Engineering to coordinate the design with our contractor. This assists us in incorporating the contractor's valuable suggestions on how to reduce project costs and deliver the best product at a reasonable price. During construction, JR Engineering, **WL Contractors**, and **Quality Paving** will work closely to revise the design to meet field conditions and insure that the project budget is maintained and our guaranteed maximum price is met.

JR Engineering *encourages the opportunity to meet with the City to discuss our preliminary design assumptions and determine a solution that meets the City's budget, while providing the desired safety improvements and best value to the City and its citizens.*

➤ **Utility Coordination and Conflict Avoidance**

A critical element of the project's schedule will be early coordination with dry utility companies and a design that limits impacts to existing utilities. Several dry utility lines exist within the Malley Drive right-of-way including a Qwest fiber optic line, gas line, and Xcel power lines. We have prepared our preliminary layout to allow





for installation of the traffic signal with minimal utility relocations, as utility relocations can often drastically affect the project's schedule. We are proposing that **WL Contractors** vacuum excavate for the proposed signal pole foundations so that minimum clearances can be maintained with dry utilities and avoid costly relocations.

Immediately following our Notice to Proceed, JR Engineering will perform utility potholing to confirm the horizontal utility locates that we have already been surveyed, and to determine vertical depths of the existing utilities. This information will then be review and our design will be adjusted accordingly to avoid utility conflicts if possible. If utility relocations are determined to be necessary JR Engineering will immediately begin coordination with the impacted dry utility company to have the utility relocated prior to the start of our construction.

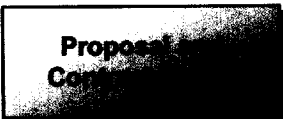
➤ **112<sup>th</sup>/Larson Drive Crosswalk Improvements**

JR Engineering understands that the City of Northglenn has had discussions with Spot Devices, and desire to install their in-road warning lights RS320 system at the intersection of 112<sup>th</sup> Avenue and Larson Drive. JR and **WL Contractors** have been in contact with Spot Devices and have discussed the specific requirements of this application.



We have also investigated an equivalent system for price and reliability. Based on our research, competitive pricing for alternative devices appears similar to the spot devices once all equipment is included. Additionally it appears that the alternative devices currently being used by other jurisdiction may pose some maintenance concerns.

Based on the City's RFP, and our initial research, we have proposed to utilize the Spot Devices system and have included the pricing within this proposal. However, should the pricing not meet the City's budget we encourage further discussion and can suggest ways to reduce the project cost. One possible option would be to only construct one crosswalk across 112<sup>th</sup> Avenue, and then direct pedestrians on Larson Drive to use this crossing.



Our team has prepared our design and assumptions to a level where we are immediately prepared to sit down with the City of Northglenn to discuss project specifics and, if needed, negotiate the proposed scope of services. If the scope of work proposed is not consistent with the needs of City of Northglenn, JR encourages additional discussion to revise the approach, scope, or other details associated with this proposal to meet the City's expectations and budget

Upon final determination of the scope of work and a fixed price, we are prepared to immediately begin work on the project.





**Project**

Following a Notice to Proceed, JR will schedule a project kick-off meeting with the City and all affected stakeholders to discuss the project along with expectations of project schedule, required permits, and deliverables.

This meeting will include:

- Review of the scope to clarify all work requirements and deliverables;
- Review the schedule to discuss critical submittal dates, review time, and project completion;
- Establish a list of key contacts for the project;
- Set a schedule for project progress meetings;
- Review requirements for Northglenn's approval and plan review;
- Solicit input from affected agencies, and utility companies; and
- Conduct an on-site field inspection to review existing field conditions, and discuss critical design issues.

**Field Work /**

Following our kick-off meeting we will research the existing project area and utility data. We will also notify existing utility owners of the project and perform utility potholing to verify our design assumptions. Concurrently we will finalize our preliminary traffic signal design, crosswalk, and roadway design. We propose at this point to review the plans with the City and begin construction upon general agreement of concept and the City's review of the preliminary plans.

Utilizing the design-build process we believe that the construction of the proposed improvements can be accomplished through preliminary plans, thereby saving design costs and time.

JR Engineering will prepare preliminary plans to include:

- Preliminary Cover Sheet showing project location.
- Preliminary Traffic Signal Plan.
- Preliminary Surface Improvement Plan.
- Traffic Control Plan.
- Final Legal Descriptions for Right-of-Way, if required.

**Construction**

The JR Engineering, *WL Contractors*, and *Quality Paving* team will work jointly to solve problems and construct the project in the field. JR will have a survey crew on the project to provide construction staking and address design changes. JR will also provide construction management support for the project and will be on the site to coordinate construction, direct any necessary design changes and provide Quality Assurance checks. We will also have *Ground Engineering* available to provide materials testing, Quality Assurance checks and to answer questions and solve geotechnical problems. Through out the process, JR Engineering will provide weekly reports of construction activity and provide progress reports to the City of Northglenn. Any deviations from the agreed upon design concept or material variations will be reviewed with the City and approved prior to construction.



**Project Cost**

At the completion of the project the JR Engineering team, along with the City will develop a punch-list and perform all required corrections. Upon approval of the final construction JR will prepare as built mylars and electronic drawings for the improvements and other physical features.

JR will prepare a close-out binder for delivery to the City that will include:

- Final As-built Plans.
- Material Submittals and Shop Drawings.
- Copies of Contract, Insurance, and Bond Information.
- Operation and Maintenance Manuals.
- Material Test Results.
- Manufacture's Certifications.
- Construction Progress Reports.

This process is different from the traditional design/bid/build project delivery approach, and to be effective needs to be implemented as a design/build process. The JR Engineering team has conducted extensive work to date to develop preliminary plans, obtain a thorough understanding of the project and assign a fixed fee cost. We are prepared to deliver this project in the manor described above for the price proposed and within the expected schedule. We are also prepared to negotiate work items and make recommendations for possible cost savings, if different criteria can be considered.



**EXHIBIT F**  
**Dated 12/29/08**

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
<b>Traffic Signal Improvements (Malley Drive and Highline Drive)</b>					
202-00700-000	Removal of Street Light	1	EA	\$ 500.00	\$ 500.00
202-00810-000	Removal of Flashing Beacon	2	EA	\$ 250.00	\$ 500.00
210-00750-000	Removal and Reset of Street Light	1	EA	\$ 2,400.00	\$ 2,400.00
613-00200-040	2" PVC Conduit Schedule 80 (Bored)	240	LF	\$ 17.00	\$ 4,080.00
613-00301-020	3" PVC Conduit Schedule 80 (Bored)	480	LF	\$ 19.00	\$ 9,120.00
613-07030-SP1	Pull Box (Medium)	4	EA	\$ 290.00	\$ 1,160.00
613-07030-SP2	Pull Box (Large)	1	EA	\$ 320.00	\$ 320.00
613-10010-010	Traffic Signal Wiring	1	LS	\$ 2,800.00	\$ 2,800.00
613-99999-SP1	Electric Service to Controller	1	LS	\$ 1,400.00	\$ 1,400.00
614-00035-010	Overhead Mounted Street Name Sign	4	EA	\$ 260.00	\$ 1,040.00
614-00035-030	Sign Panel 12"x18" (R9-2)	2	EA	\$ 40.00	\$ 80.00
614-00035-170	Overhead Mounted Sign Panel 30"x36" (R3-5L)	2	EA	\$ 180.00	\$ 360.00
614-00035-170	Overhead Mounted Sign Panel 30"x36" (R3-5a Modified)	1	EA	\$ 180.00	\$ 180.00
614-70561-020	Traffic Signal Head (3-Section)	7	EA	\$ 660.00	\$ 4,620.00
614-70561-030	Traffic Signal Head (3-Section w/ Back Plate)	9	EA	\$ 710.00	\$ 6,390.00
614-72855-000	Traffic Signal Controller w/ Cabinet and Foundation	1	EA	\$ 20,950.00	\$ 20,950.00
614-72858-SPC	Pedestal Pole w/ Foundation (18" Dia.) [Install Only]	1	EA	\$ 510.00	\$ 510.00
614-72861-010	Pedestrian Signal Head w/ Incorporated Countdown Timer, Push Button, and 9"x12" Sign Panel	6	EA	\$ 800.00	\$ 4,800.00
614-72895-000	Vehicle Detection System (Single Camera)	2	EA	\$ 6,900.00	\$ 13,800.00
614-72895-010	Opticom Emergency Vehicle Detector (Model 722)	1	EA	\$ 1,110.00	\$ 1,110.00
614-72895-010	Opticom Emergency Vehicle Detector (Model 711)	1	EA	\$ 820.00	\$ 820.00
614-81000-SP1	Traffic Signal Pole and Luminaire w/ Foundation (36" Dia.) [Vacuum Excavate - Install Pole Only]	2	EA	\$ 7,550.00	\$ 15,100.00
614-81000-SP2	Traffic Signal Pole (with Dual M/A) and Luminaire w/ Foundation (36" Dia.) [Vacuum Excavate]	1	EA	\$ 13,510.00	\$ 13,510.00
614-83300-035	Traffic Signal Mast Arm (35' Length) [Install Only]	2	EA	\$ 480.00	\$ 960.00
614-83300-040	Traffic Signal Mast Arm (40' Length)	2	EA	\$ 9,070.00	\$ 18,140.00
614-86002-SPC	Radio Interconnect System	1	LS	\$ 15,570.00	\$ 15,570.00
630-10005-000	Traffic Control	1	LS	\$ 5,000.00	\$ 5,000.00
630-20000-000	Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00
<b>SUBTOTAL</b>					<b>\$ 150,220.00</b>
<b>Roadway Improvements (Malley Drive and Highline Drive)</b>					
202-00175-010	Removal of Concrete Crosspan	13	SY	\$ 275.00	\$ 3,575.00
202-00200-000	Removal of Sidewalk	195	SY	\$ 8.00	\$ 1,560.00
202-00203-000	Removal of Curb and Gutter	10	LF	\$ 34.50	\$ 345.00
208-00020-000	Silt Fence	250	LF	\$ 2.50	\$ 625.00
208-00050-000	Storm Drain Inlet Protection	2	EA	\$ 180.00	\$ 360.00
212-00006-010	Seeding	1	AC	\$ 1,900.00	\$ 1,900.00
213-00000-010	Mulching (Crimped)	1	AC	\$ 1,300.00	\$ 1,300.00
306-01000-030	Reconditioning (M/D Subgrade Preparation) 12" Depth	13	SY	\$ 135.00	\$ 1,755.00
608-00000-010	Concrete Sidewalk/Trail w/ Fiber Mesh (4" Depth)	60	SY	\$ 42.00	\$ 2,520.00
608-00000-020	Concrete Sidewalk/Trail w/ Fiber Mesh (6" Depth)	100	SY	\$ 55.85	\$ 5,585.00
608-00010-SP1	Concrete Curb Ramp (4' Width Type 2) [w/ Detectable Warning Well]	1	EA	\$ 1,065.00	\$ 1,065.00
608-00010-SP2	Concrete Curb Ramp (4' Width Type 3) [w/ Detectable Warning Well]	3	EA	\$ 1,230.00	\$ 3,690.00
608-00010-SP3	Concrete Curb Ramp (8' Width Type 3) [w/ Detectable Warning Well]	2	EA	\$ 1,600.00	\$ 3,200.00

**EXHIBIT F**  
**Dated 12/29/08**

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
609-21020-000	Curb and Gutter Type 2 (Section II-B)	10	LF	\$ 130.00	\$ 1,300.00
609-24000-020	Cross Pan (8" Depth)	13	SY	\$ 115.00	\$ 1,495.00
630-10005-000	Traffic Control	1	LS	\$ 9,500.00	\$ 9,500.00
630-20000-000	Mobilization	1	LS	\$ 3,500.00	\$ 3,500.00
<b>SUBTOTAL</b>					<b>\$ 43,275.00</b>
 <b>Crosswalk Lighting (112th Avenue and Larson Drive)</b>					
202-00200-000	Removal of Sidewalk	20	SY	\$ 8.00	\$ 160.00
608-00010-SP2	Concrete Curb Ramp (4' Width Type 3) [w/ Detectable Warning Well]	2	EA	\$ 1,230.00	\$ 2,460.00
614-00035-SPC	Sign Panel w/ Post [R9-3b]	2	EA	\$ 340.00	\$ 680.00
614-99999-SP2	Crosswalk Lighting (Supply and Installation) (West Crosswalk Only)	1	LS	\$ 38,840.00	\$ 38,840.00
630-10005-000	Traffic Control	1	LS	\$ 2,800.00	\$ 2,800.00
<b>SUBTOTAL</b>					<b>\$ 44,940.00</b>

## **EXHIBIT G**

### **BONDS AND INSURANCE REQUIREMENTS**

#### **1.01 GENERAL:**

The Contractor shall not commence work under this Contract until he has obtained all insurance required by the Contract Documents and such insurance has been approved by City, nor shall the Contractor allow any Subcontractor to commence work on this Project until all similar insurance required of the Subcontractor has been obtained and approved. During the life of this Contract, the Contractor must maintain the insurance coverage listed in Section 1. The City must be named as an additional insured. Limits of liability must be at least those set forth in the General Liability Insurance (Insurance Requirements) portion of this Contract. All policies of insurance required by this section shall be written by insurance companies licensed to do business in the State of Colorado.

#### **1.02 INDEMNIFICATION:**

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, agents and their insurers, from the against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Contractor, the Contractor's employees, subcontractors or anyone else employed directly or indirectly by the Contractor, Contractor's employees or subcontractor.

The Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the City, Contractor agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

#### **1.03 GENERAL LIABILITY INSURANCE: (Insurance Requirements)**

- A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 1.02 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations

assumed pursuant to Section 1.02 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.

B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 1.02 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease – policy limit, and five hundred thousand dollars (\$500,000) disease – each employee.
2. General Public Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of the injury to or destruction of property in any one (1) accident and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.
3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability Insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.
- C. **To the extent that liability results from the acts or omissions of the Contractor, the policy required by paragraph (B)(2) above and by paragraph (B)(3) above shall be endorsed to include the City of Northglenn and the City of Northglenn's officers, volunteers and employees as additional insured.** Every policy required above shall be primary insurance, and any insurance carried by the City of Northglenn, its officers, or its employees, or carried by or provided through any insurance pool of the City of Northglenn's, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.
- D. **The Certificate of Insurance, with an original signature (not a copy) shall be provided to the City of Northglenn, and shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City of Northglenn prior to commencement of the contract.** No other form of certificate shall be used. If the City is named as an additional assured on any policy that does not allow for the automatic addition of additional insureds, the Contractor's insurance agent shall also provide a copy of all accompanying endorsements recognizing the City as an additional insured. The certificate shall identify this contract and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City of Northglenn. The completed certificate of insurance shall be sent to:

City of Northglenn  
PO Box 330061  
11701 Community Center Drive  
Northglenn, Colorado 80233

The Certificate of Insurance shall include the name of the project and formal bid number on the form.

- E. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City of Northglenn may immediately terminate this contract, or at its discretion the City of Northglenn 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 so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

- F. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- G. The parties hereto understand and agree the City of Northglenn is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City of Northglenn, its officers, its employees, or its volunteers.

**1.04 PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND AND OTHER BONDS:**

Contractor shall furnish a Performance, Payment, Maintenance and Warranty Bond on the City of Northglenn Approved Bond Form, in accordance with applicable Colorado statutes, in an amount at least equal to the Contract Price as security for the faithful performance, payment, maintenance and warranty of all Contractor's obligations under the Contract Documents. This Bond shall remain in effect at least until two (2) years after the date of Probationary Acceptance. Contractor shall also furnish such other Bonds as are required by the Special Conditions (if any). All Bonds shall be on City of Northglenn Approved Bond forms prescribed by the Contract Documents and be executed by such Sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the Authority to Act. If the Surety on any Bond furnished by the Contractor is declared bankrupt, or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this Section, Contractor shall within five (5) calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to City.



**EXHIBIT H**

**PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND**

KNOWN ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

\_\_\_\_\_ as Principal, herein called Contractor, and \_\_\_\_\_ as surety, herein called Surety, are hereby held and firmly bound unto the City of Northglenn, as Obligee, herein called the Owner, the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof Contractor and Surety find themselves their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written Agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a Contract with the Owner for the \_\_\_\_\_ Project Number \_\_\_\_\_ in accordance with Plans and Specifications prepared by \_\_\_\_\_

\_\_\_\_\_ which Contract is by reference made a part hereof, and is herein referred to as the Contract.

WHEREAS, Contractor and Surety are jointly and severally liable under the provisions hereof and action against either or both may proceed without prior action against the other, and both may be joined in one action.

WHEREAS, the Surety hereby waives notice of any alteration of the Contract or extension of time made by Owner.

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The Contractor shall: (1) faithfully perform all requirements and obligations of the Contract, and other applicable law, and satisfy all claims and demands incurred for the same; and (2) fully indemnify and save harmless the City from all costs and damages which the City may incur in making good any default.

SECOND. To the extent permitted by law, the Contractor shall protect, defend, indemnify and save harmless the City and its officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including, in part, the loss of use, resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor, or his employees, servants, agents, subcontractors or suppliers, or anyone else under the Contractor's direction and control (regardless of whether or not cause in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any Work called for by the Contract, or from conditions created by the performance or non-performance of said Work.

Whenever Contractor shall be, and declared by Owner to be in default under Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions or
2. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible Bidder, or, if the Owner elects upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and Owner, and make available as Work progresses (even though there should be a default or succession of defaults under Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price but not exceeding, including other costs and damages for which the Surety may be

liable hereunder, the amount set forth in the first paragraph, shall mean the total amount payable by Owner to Contractor under Contract and any Contract Change Orders thereto, less the amount properly paid by Owner to Contractor.

**THIRD.** The Contractor shall pay all persons, firms and corporations, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment used or rented in the performance of the work covered by the Contract subject, however, to the following conditions:

1. A claimant is defined as one having a direct Contract with the Principal, or with a Subcontractor of the Principal for labor material or both, used or reasonably required for use in performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's Work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due the claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, other than one having a direct Contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the Work or labor was done or performed. Such notice shall be served by mailing same by registered mail or certified, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
  - b. After expiration of six (6) months following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof is situated, or in the United States District Court for the District in which the Project, or any part thereof, is situated, and not elsewhere.

**FOURTH.** The Contractor and Surety shall guarantee and warrant that all Work shall remain in good order and repair for a period of **two (2) years** from date of probationary acceptance from all causes arising from defective workmanship and materials, and shall make all repairs arising from said causes during such period without further compensation, and shall guarantee the Facilities and Work and areas within the public rights-of-way affected by such Facilities or Work against defective workmanship and materials and shall keep the Facilities in good order and repair without further compensation for a period of two (2) years from and after final acceptance thereof by the City. The determination of the necessity for the repair or replacement of any Work or Facilities shall rest entirely with the City, and the City's decision upon the matter shall be final and obligatory upon the Contractor, subject to judicial review pursuant to applicable law.

The Surety shall be deemed and held, notwithstanding any Contract provision, or other agreement to the contrary, to consent without notice to:

1. Any extension of time to the Contractor in which to perform any Work, Permit conditions or obligations.

Bond No. \_\_\_\_\_

2. any change in the Permit or other Permit documents.

Further, the Surety shall pay to the City all costs and attorney fees necessary to enforce the provisions of the bond provisions contained herein.

Unless prohibited by law, an action on this bond may be brought by the City or any person entitled to the benefits of this bond at any time within two (2) years from the date of final acceptance of the Work performed pursuant to the Permit.

Upon full compliance with all the obligations of the Contract, the City shall release this bond, in writing. This bond shall remain in effect until released by the City or the City consents in writing to acceptance of a substitute bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

# EXHIBIT I

CO080012 MOD 9 REVISED 12/05/08 CO12

\*\*\*\*\* THIS WAGE DETERMINATION WAS REPLACED ON 12/05/08\*\*\*\*\*

General Decision Number: CO080012 11/07/2008

Superseded General Decision Number: CO20070012

State: Colorado

Construction Type: Heavy

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

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	04/04/2008
3	05/02/2008
4	06/06/2008
5	07/04/2008
6	08/15/2008
7	09/05/2008
8	10/03/2008
9	11/07/2008

\* ASBE0028-001 07/01/2008

Rates

Fringes

Asbestos Workers/Insulator

(Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....\$ 22.14

10.53

-----  
BRCO0007-004 05/01/2008

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

Rates Fringes

BRICKLAYER.....\$ 22.55 8.97

-----

BRCO0007-006 05/01/2008

EL PASO AND PUEBLO COUNTIES

Rates Fringes

BRICKLAYER.....\$ 22.55 8.97

-----

ELEC0012-004 09/01/2007

PUEBLO COUNTY

Rates Fringes

ELECTRICIAN

Electrical work where the cost is \$150,000 or less....\$ 22.44 10.77

Electrical work where the cost is over \$150,000.....\$ 26.59 10.90

-----

ELEC0068-001 06/01/2008

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

Rates Fringes

ELECTRICIAN.....\$ 30.00 10.82

-----

ELEC0111-001 09/01/2008

Rates Fringes

Line Construction:

Groundman.....	\$ 15.58	20.75%+4.75
Line Equipment Operator.....	\$ 24.38	20.75%+4.75
Lineman and Welder.....	\$ 34.94	22.75%+4.75

-----  
 ELEC0113-002 06/01/2008

EL PASO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 27.80	3%+12.55

-----  
 ELEC0969-002 06/01/2007

MESA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 20.31	8.56

-----  
 ENGI0009-001 05/01/2008

	Rates	Fringes
Power equipment operators:		
Blade: Finish.....	\$ 22.97	8.72
Blade: Rough.....	\$ 22.67	8.72
Bulldozer.....	\$ 22.67	8.72
Cranes: 50 tons and under..	\$ 22.82	8.72
Cranes: 51 to 90 tons.....	\$ 22.97	8.72
Cranes: 91 to 140 tons.....	\$ 23.12	8.72
Cranes: 141 tons and over...	\$ 23.88	8.72
Forklift.....	\$ 22.32	8.72
Mechanic.....	\$ 22.82	8.72
Oiler.....	\$ 21.97	8.72
Scraper: Single bowl under 40 cubic yards.....	\$ 22.82	8.72
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls.....	\$ 22.97	8.72
Trackhoe.....	\$ 22.82	8.72

-----  
IRON0024-003 04/01/2008

	Rates	Fringes
Ironworkers:.....	\$ 24.00	10.87
Structural		

-----  
LABO0086-001 05/01/2003

	Rates	Fringes
Laborers:		
Pipelayer.....	\$ 16.29	4.25

-----  
PLUM0003-005 08/02/2008

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

	Rates	Fringes
PLUMBER.....	\$ 35.52	10.20

-----  
PLUM0058-002 07/01/2008

EL PASO COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 28.55	11.10

-----  
PLUM0058-008 07/01/2008

PUEBLO COUNTY

	Rates	Fringes
Plumbers and Pipefitters		
Free Zone - 0 to 40 miles...	\$ 24.15	11.10

Zone 1 - 40 miles and over: \$19.85 per hour + \$32.00 per day



per diem will be paid on projects over 40 miles (Zone 1) measured in practical driving miles by the shortest route, beginning at 5th and Main Streets in Pueblo, Colorado, when the employee stays overnight or drives their own vehicle.

Hazardous pay: Add \$2.20 per hour to base rate. Hazardous pay applies to projects at chemical plants, steel mills, cement plants, power generator plants, process piping at manufacturing plants, food processing plants, and all projects which may present a health hazard or serious personal injury.

-----  
PLUM0145-002 05/01/2008

MESA COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 23.90	9.10

-----  
PLUM0208-004 06/01/2008

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

	Rates	Fringes
PIPEFITTER.....	\$ 32.95	10.27

-----  
SHEE0009-002 07/01/2008

	Rates	Fringes
Sheet metal worker.....	\$ 29.30	11.32

-----  
SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	

Carpenters:

Form Building and Setting...	\$ 16.97	2.74
All Other Work.....	\$ 15.14	3.37
Cement Mason/Concrete Finisher...	\$ 17.31	2.85
IRONWORKER, REINFORCING.....	\$ 18.83	3.90
Laborers:		
Common.....	\$ 11.22	2.92
Flagger.....	\$ 8.91	3.80
Landscape.....	\$ 12.56	3.21
Painters:		
Brush, Roller & Spray.....	\$ 15.81	3.26
Power equipment operators:		
Backhoe.....	\$ 16.36	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37	4.41

-----  
 TEAM0435-001 05/01/2000

Rates                      Fringes

Truck drivers:		
Pickup.....	\$ 14.21	5.27
Tandem/Semi and Water.....	\$ 14.93	5.27

-----

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

=====

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

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

---

#### WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.)

and 3.) should be followed.

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

Branch of Construction Wage Determinations

Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

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

Administrative Review Board

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

=====

END OF GENERAL DECISION