

**Parks, Recreation and Cultural Services
Memorandum #1-2012**

DATE: January 26, 2012

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William A. Simmons, City Manager *WAS*
Amanda J. Peterson, Director of Parks, Recreation & Cultural Services *AP*

SUBJECT: CR-10- Recreation Center HVAC and Roof

RECOMMENDATION:

Staff recommends approval of the proposed Resolution. Attached to this memorandum is a Resolution that, if approved, would:

- 1) Authorize the Mayor to execute a contract between the City of Northglenn and DS Constructors, LLC, for the Recreation Center HVAC and roof construction in the amount of \$1,508,400.00;
- 2) Authorize \$86,300.00 as a contingency and authorize the City Manager, on behalf of the City, to approve minor changes in the scope of work and execute relevant change orders up to the approved expenditure limit of \$1,594,700.00.

BACKGROUND: As identified previously, the roof and HVAC system at the Recreation Center are in need of replacement. The proposed contract is for the complete replacement of the roof, all of the HVAC units and the addition of a direct digital control (DDC) system.

A formal Request for Bids was issued for this project, as per the design prepared by Beaudin Ganze. There were five bids submitted for this project. DS Constructors, LLC, was determined to be the most suitable bidder. Bids were evaluated on the base bid plus the desired add alternates and deduct alternates. The low bid, when including the desired add alternate of DDC and the deduct alternate of the gym humidifier, was selected. City staff contacted the submitted references and determined the Contractor's past performance on similar projects meets the City's standards. A copy of the bid tab is attached.

The add alternate of a cover for the flat roof segments is not recommended at this time, as the additional cost would significantly overrun the budget. The existing flat roof segments will be replaced with a similar flat roof system.

It has been determined that there is some asbestos on the parapet walls on the roof of the building that would need to be removed from the existing roof prior to construction. This work will be done with another contractor, as DS Constructors, LLC, does not do asbestos removal. The total cost for the asbestos removal is \$21,210.00. This will be contracted using a Professional Services Agreement, and is outside of the scope of the contract with DS Constructors, LLC.

BUDGET/TIME IMPLICATIONS: Funding in the amount of \$1,700,000.00 was budgeted for design and construction of the roof and HVAC, and is available in the Conservation Trust Fund and the

Capital Projects Fund, as appropriated through 2011 budget appropriations, acceptance of a \$500,000.00 grant from Adams County Open Space and CB-1753.

The design of the project cost \$84,090.00, leaving \$1,615,910.00 for construction. The bid price for the roof and HVAC, with the recommended add and deduct alternates, has a construction cost of \$1,508,400.00. Once the cost of the asbestos removal is factored in, this leaves \$86,300.00, or 5% for contingency. This is lower than the standard 10% contingency. Council action would be sought for any unanticipated changes to the contract beyond the 5% contingency.

Design	\$84,090.00
Bid for Construction	\$1,508,400.00
Contingency	\$86,300.00
Asbestos Removal	\$21,210.00
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Total Budget	\$1,700,000.00

STAFF REFERENCE: Please contact Amanda Peterson at apeterson@northglenn.org or by phone at 303.450.8727 for any further questions.



**CITY OF NORTHGLENN
FORMAL BID SUMMARY**

BID NUMBER: IFB 2011-36

PAGE 1

BID NAME 2011 Recreation Center Roof and HVAC Project

DEPARTMENT: PARKS AND REC

	Growling Bear Co., Inc.	Gamma Construction company	Himmelman construction, Inc.	Ward construction Company	DS Constructors, LLC
DATE DUE: 11/07/2011	BID RECEIVED: DATE: 11/07/11	BID RECEIVED: DATE: 11/07/11	BID RECEIVED: DATE: 11/07/11	BID RECEIVED: DATE: 11/07/11	BID RECEIVED: DATE: 11/07/11
TIME: 2:00 PM	TIME: 1:56pm	TIME: 1:57PM	TIME: 1:57PM	TIME: 1:57pm	TIME: 1:58pm
Base Bid Roof replacement and HVAC Upgrades	\$1,663,418.00	\$1,549,000.00	\$1,515,000.00	\$1,526,000.00	\$1,498,000.00
Add Alternate 1- Partial roof enclosure see S2-ALT2	+ \$ 222,328.00	+ \$ 275,000.00	+ \$ 205,000.00	+ \$ 237,000.00	+ \$ 188,000.00
Add Alternate 2- Partial roof enclosure plan sheet S2-ALT3	+ \$ 320,879.00	+ \$ 370,000.00	+ \$ 285,000.00	+ \$ 348,000.00	+ \$ 287,600.00
Deduct Alternate 3 -New RTU 10 not required	- \$ 21,642.00	- \$ 20,000.00	- \$ 26,000.00	- \$ 22,500.00	- \$ 27,600.00
Deduct Alternate 4- New TRU 2 not required	- \$ 36,675.00	- \$ 45,000.00	- \$ 39,000.00	- \$ 40,000.00	- \$ 38,000.00
Deduct Alternate 5- Use planter area for crane	+ \$ 7,343.00	+ \$ 5,000.00	0	+ \$ 13,500.00	+ \$ 10,000.00
Deduct Alternate 6-Deduct Ductwork revision on lower level	- \$ 2,826.00	- \$ 5,000.00	- \$ 12,500.00	- \$ 4,000.00	- \$ 8,800.00
Deduct Alternate 7-Deduct Ductwork revision on upper level	- \$ 6,600.00	- \$ 12,000.00	- \$ 10,400.00	- \$ 6,600.00	- \$ 9,600.00
Deduct Alternate 8-Deduct diffusers in theater	- \$ 2,400.00	- \$ 3,500.00	- \$ 2,600.00	- \$ 2,400.00	- \$ 3,500.00
Deduct Alternate 9-Deduct humidifier in gym	- \$ 16,813.00	- \$ 1,000.00	- \$ 23,000.00	- \$ 16,300.00	- \$ 16,000.00
Add Alternate 10-add DDC System	+ \$ 25,819.00	+ \$ 30,000.00	+ \$ 35,500.00	+ \$ 27,400.00	+ \$ 26,400.00

Kathleen Krasnick
Buyer

Cristal Messick
City Clerk Deputy

11/9/2011
Date

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-10
Series of 2012

Series of 2012

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND DS CONSTRUCTORS, LLC FOR THE RECREATION CENTER ROOF AND HVAC 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 DS Constructors, LLC, attached hereto, in the amount of \$1,508,400.00 with a contingency of \$86,300.00 for a total amount not to exceed \$1,594,700.00 for the Recreation Center Roof and HVAC 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 _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

SECTION 005200 - AGREEMENT FORM

PROJECT NAME: 2011 Recreation Center Roof and HVAC Replacement Project

PROJECT NUMBER: IFB 2011-36 **PROJECT MANAGER:** Joliette Woodson

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the City of Northglenn, hereinafter called "CITY", and DS Constructors, LLC, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the project named:

"2011 Recreation Center Roof and HVAC Project"

2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor supervision, and other services necessary for the completion of the PROJECT described herein.

3. The CONTRACTOR will provide performance and payment bonds and a certificate of insurance naming the City as an additional insured for purposes of said project within 10 days after the date of the NOTICE OF AWARD.

4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$1,508,400.00, or as shown in the BID schedule. The CONTRACTOR will commence the work within 10 calendar days after the date of NOTICE TO PROCEED. The CONTRACTOR will complete the work within 140 working days after the date of NOTICE TO PROCEED unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

5. The term "CONTRACT DOCUMENTS" means and includes all items as set forth in Section 1.01 of the General Conditions.

6. The CITY will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This AGREEMENT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.



IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in TWO copies, each of which shall be deemed an original on the date first above written.

CITY:
City of Northglenn
By _____
Name Joyce Downing
Title Mayor

ATTEST:

Name _____
Title City Clerk

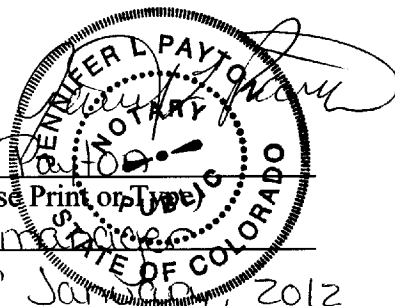
(SEAL)

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

(SEAL)
ATTEST:

Jennifer L. Payton
Name (Please Print or Type)
Title Office Manager



23rd day of January, 2012
EXP: 8/15/2015
2014050498

CONTRACTOR:
By James R. Swanstrom 1/23/2012
Name JAMES R SWANSTROM
(Please Type or Print)

Title VP PRECONSTRUCTION
Address
3780 N. GARFIELD AVENUE S-101
LOVELAND, CO 80538

CITY'S CONTRACT # _____

J. Woodson
Print Name of City's Project Manager

END OF SECTION 005200

SECTION 007200 - GENERAL CONDITIONS

PART 1 - CONTENTS AND DEFINITIONS

1.1 **CONTRACT DOCUMENTS:** The Contract comprises the following documents, including all additions, deletions and modifications incorporated therein before the execution of the Contract.

A. **Legal and Procedural Documents**

1. Invitation (advertisement) to Bid
2. Table of Contents
3. Instructions to Bidders
4. General Conditions
5. Special Conditions
6. Technical Provisions
7. Bid
8. Bid Bond
9. Agreement
10. Performance, Payment, Maintenance and Warranty Bond
11. Certificate of Insurance
12. Notice of Award
13. Notice to Proceed
14. Addendum
15. Drawings
16. Change Orders

1.2 **ACT OF GOD:**

Means an earthquake, tornado, or other cataclysmic phenomenon of nature. Rain, wind, flood or other natural phenomenon of normal intensity for the locality shall not be construed as an Act of God and no reparation, or extension of time, shall be granted to the Contractor for damages to the work or delays resulting there from.

1.3 **ADDENDUM:**

A change in the Contract Documents issued prior to the opening of proposals.

1.4 **BID BOND:**

Applicable per bid instructions

1.5 **CALENDAR DAY:**

A day of twenty-four hours measured from midnight to the next midnight.

1.6 **CHANGE ORDER:**

A written order to the Contractor by the City authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time issued after execution of the agreement.

1.7 **CITY:**

This term refers to the City of Northglenn, as well as to each city department, division or other agency, or Project Manager as set forth in the contract documents as having some responsibility for supervising the implementation of the contract.

1.8 COMPETENT PERSON:

A definition contained in the OSHA regulations on excavations, 29 CFR, Subpart P, Part 1926 and defined as a person who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

1.9 CONTRACT:

Is the written agreement covering the performance of the work described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the work materials therefore. The term is used generally and does not refer to any particular document.

1.10 CONTRACTOR:

Is the Contractor named in the Contract Documents.

1.11 DEFECTIVE WORK:

Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or which has been damaged prior to final payment.

1.12 DRAWINGS:

PART 2 - Are those listed in the Special Conditions with all addenda thereto.

2.1 ENGINEER:

The Public Works Director of the City of Northglenn or his representative is duly authorized to act for the Manager as appropriate under the circumstances of this Contract.

2.2 FINAL ACCEPTANCE

The date in which the Contractor has completed any or all repairs after completion of the two (2) year Probationary Warranty period under the provisions of the Contract, and the Project Manager accepts the work in writing for Final Acceptance and City maintenance.

2.3 LIQUIDATED DAMAGES:

The amount prescribed in the Special Conditions to be paid to the City or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed by the Specifications.

2.4 MODIFICATION:

- A. A written amendment of the Contract Documents signed by both parties;
- B. A Change Order;
- C. A written clarification or interpretation issued by the Project Manager;
- D. A written order for a minor change or alteration in the work issued by Project Manager.

A modification may only be issued after execution of the Agreement.

2.5 PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND:

Is the approved form of security furnished by the Contractor and his surety on the City provided form as a guaranty of full and complete performance of the work in accordance with the terms of the Contract, payment to creditors for claims for labor and materials, used in the performance of the contract, maintenance and warranty performance during the 2 year warranty period in accordance with the terms of the contract.

2.6 PROBATIONARY ACCEPTANCE

The warranty period shall begin on the date of the City's Probationary Acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the two (2) year warranty period starting with the date of Probationary Acceptance.

2.7 PROJECT MANAGER:

Is the City's duly authorized representative in charge of the project; Person to whom Contractor refers questions on documents and forms for payment.

2.8 PROPOSAL/BID:

The offer of a Bid to perform the work described by the Contract Documents when made out and submitted on the prescribed BID Form, properly signed and guaranteed.

2.9 SHOP DRAWINGS:

All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor and which illustrates the equipment, material, or some other portion of the work.

2.10 SPECIFICATIONS:

Shall mean City of Northglenn Standards and Specifications, Legal and Procedural Documents, General Conditions of the Contract, together with the modifications thereof, Special Conditions of the Contract and the Technical Provisions of the contract with all addenda thereto.

2.11 SUBCONTRACTOR:

Is any person, firm or corporation with a direct contract with the Contractor who acts for or in behalf of the contractor in executing any part of the Contract, but does not include one who merely furnishes material.

2.12 SUBSTANTIAL COMPLETION:

The date as certified by the Project Manager when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the project or specified part can be

utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with approval of final payment.

2.13 SURETY:

Is the person, firm or corporation who executes the Contractor's Performance, Payment, Maintenance and Warranty Bond as guarantor.

2.14 WORKING DAY:

Any day, exclusive of Saturdays, Sundays, and holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for a major part of the day with the normal working force. Observed holidays are: New Year's Day, Martin Luther King Jr.'s Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

2.15 WORK:

All the work specified, indicated, shown or contemplated in the Contract to construct the improvement, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

2.16 WRITTEN NOTICE:

Written Notice shall be considered served when delivered in person or sent by registered mail to the individual, firm, or corporation or to the last business address of such known to him who serves the Notice.

2.17 GROWING SEASON:

Is the period measured from April to August during which the City of Northglenn will review the health and growth of its landscape plant material.

2.18 PROBATIONARY ACCEPTANCE OF LANDSCAPE PLANT MATERIAL AND IRRIGATION

The warranty period shall begin on the date of the City's Probationary Acceptance of work relating to landscape plant material and irrigation. If repairs are required during the warranty period, those repairs need only be warranted until the end of the two (2) full growing seasons warranty period started with the date of Probationary Acceptance.

2.19 LANDSCAPE PLANT MATERIAL:

Shall be defined as all organic plant material including but not limited to trees, shrubs, perennials, annuals and turf.

PART 3 - DRAWINGS, SPECIFICATIONS AND RELATED DATA

3.1 INTENT OF DRAWINGS AND SPECIFICATIONS:

The intent of the Drawings and Specifications is that the Contractor furnishes all supervision, labor and materials, equipment and transportation necessary for the proper execution of the work unless specifically noted otherwise. The contractor shall do all the work shown on the drawings and described in the specifications and all incidental work considered necessary to complete the project in a substantial and acceptable manner, and to fully complete the work or improvement, ready for use, occupancy and operation by the City.

3.2 CONFLICT:

If there is a conflict or variance between the drawings and the specifications, the provisions of the Specifications shall govern. Check with the Project Manager for clarification. In case of conflict between the General Conditions of the Contract and the Supplementary Conditions, the Supplementary Conditions shall govern. The Technical Provisions shall govern over the Supplementary Conditions and General Conditions. The Special Conditions shall govern over the Technical Specifications. Detail drawings shall govern over general drawings. Dimensions indicated by written figures on drawings shall govern over scaled dimensions on the drawings.

3.3 DISCREPANCIES IN DRAWINGS:

Any discrepancies found between the Drawings and Specifications and site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported in writing to the Project Manager, who shall promptly correct such errors, or omissions in writing. Any work done by the Contractor after his discovery of such discrepancies, errors or omissions **WITHOUT** written instructions by the Project Manager shall be done at the Contractor's risk.

3.4 ADEQUACY OF DRAWINGS AND SPECIFICATIONS:

Responsibility for adequacy of the design and for sufficiency of the Drawings and Specifications shall be borne by the City. The complete requirements of the work to be performed under the Contract shall be set forth in Drawings and Specification to be supplied by the City through the Project Manager or by the Engineer as representative of the City. Drawings and Specifications furnished shall be in accordance with the Contract Documents and shall be true and accurate developments thereof.

3.5 ADDITIONAL INSTRUCTIONS:

The Project Manager may issue further instructions during the progress of the work by means of Drawings or otherwise to make more clear or specific the Drawings and Specifications or as may be necessary to explain or illustrate changes in the work to be done.

3.6 COPIES OF DRAWINGS, SPECIFICATIONS, AND BID BOOKS FURNISHED:

Except as provided for otherwise, two (2) sets of required copies of Drawings and Specifications necessary for the execution of the work shall be furnished to the Contractor without charge.

3.7 OWNERSHIP OF DRAWINGS AND SPECIFICATION:

All original or duplicated Drawings and Specifications and other data prepared by the Project Manager shall remain the property of the City and they shall not be reused on other work, but shall be returned to the Project Manager upon completion of the work.

3.8 SHOP DRAWINGS AND SAMPLES:

All samples called for in the Specifications or required by the Project Manager shall be furnished by the Contractor and shall be submitted to the Project Manager for his approval. Shop drawings and samples shall be checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, pertinent catalog numbers and the use for which intended. Shop drawings and samples shall be furnished so as not to delay the project, allowing the Project Manager reasonable time, but not less than seven (7) calendar days, for the consideration of the samples submitted. The Contractor shall also furnish samples for tests when required by the Specifications or the Project Manager.

When tests are required, they shall be performed by certified field or laboratory testing personnel in accordance with accepted testing procedures. If test results indicate compliance with Specifications, costs for such tests will be borne by the City. If tests indicate noncompliance with the Specifications, costs for such tests and retests will be borne by

the Contractor and corrective measures shall be undertaken by the Contractor to rectify problems resulting from said noncompliance, at the Contractor's expense.

3.9 SURVEYS:

Unless otherwise specified, the Contractor shall establish all base lines for the location of the principal component parts of the work together with a suitable number of bench marks adjacent to the work.

Any benchmarks or base lines damaged by the Contractor shall be replaced at the Contractor's expense.

3.10 ROYALTIES AND PATENTS

The Bidder shall pay all applicable license fees and royalties. The Bidder shall include and shall be considered to have included in the bid a sum sufficient to cover all fees, royalties, licenses, and claims for any patent rights, trade secrets, copyrights, trademarks or other intellectual property, which may be connected with the work. If the Bidder uses any such intellectual property in the work, the Bidder shall enter into a written agreement with the owner of the intellectual property to provide that there will be no future payments owed by the City. The Bidder shall defend, indemnify and hold harmless the City, its officers, agents and employees from all fees, royalties, licenses and claims or suits therefore, including attorney fees, in connection with any infringement or alleged infringement of any intellectual property right.

3.11 SITE INSPECTION

Bidders are responsible for examining thoroughly the contract documents and related data identified in the bidding documents; examining and determining for themselves the location and nature of the proposed work, the amount and character of the labor and materials required therefore, and the difficulties which may be encountered; studying and carefully correlating Bidder knowledge and observations with the contract documents and related data; and considering federal, state, and local laws and regulations that may affect cost, progress, performance or furnishing of the work.

3.12 APPLICABILITY:

The General Conditions of the Contract are used on a number of different types of projects and of necessity include articles which may not apply to a particular contract. For example, Section 2.9 stating what survey work City will provide may be applicable to a new construction project, whereas it may not be applicable to a maintenance-type project such as a street overlay project. If the Contractor has a substantial question concerning applicability of a particular section of the General Conditions, he shall request clarification in writing prior to submitting a Bid.

PART 4 - CITY-ENGINEER-CONTRACTOR RELATIONS

4.1 ENGINEER'S RESPONSIBILITY AND AUTHORITY:

All work shall be done under the general supervision of the Engineer OR designated Project Manager. The Engineer/Project Manager shall decide any and all questions that may arise as to the quality and acceptability of materials furnished, as to the quality of work performed, rate of progress of work, interpretation of Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.

4.2 TEMPORARY SUSPENSION OF WORK:

The Project Manager shall have the authority to suspend the work, wholly or in part for such period or periods as he may deem necessary, not to exceed 120 calendar days, due to unsuitable weather, or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the Contractor to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications. The Contractor shall not suspend operation without the Project Manager's permission unless danger to life or property would result

from continued operation. Notice of temporary suspension shall set forth the date upon which the work is to be resumed. The Contractor shall resume work upon written notice from the City and within ten (10) calendar days after the date set forth in the notice of suspension. If the City does not give written notice to resume work within ten (10) calendar days of the date fixed in the notice of suspension, the Contractor may abandon that portion of the work so suspended and shall be entitled to payment in accordance with Section 7.10.

4.3 INSPECTION OF WORK:

All materials and each part or detail of the work shall be subject at all times to inspection by the Project Manager and/or City Inspector, and the Contractor will be held strictly to the true intent of the Specifications in regard to quality of materials, workmanship, and the diligent execution of the Contract. Such inspection may include mill, plant, or shop inspection, and any material furnished under these Specifications is subject to such inspection. The Project Manager and/or City Inspector shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

4.4 EXAMINATION OF COMPLETED WORK:

If the Project Manager and/or City Inspector requests it, the Contractor at any time before acceptance of the work shall remove or uncover portions of the finished work as may be directed. After inspection, if said portions of the work thus exposed prove acceptable, the uncovering and the replacing of the covering shall be paid for as extra work, but should the work so exposed prove unacceptable, the uncovering, removing and replacing shall be at the Contractor's expense.

4.5 CONTRACTOR'S SUPERINTENDENT:

A qualified superintendent, who is acceptable to the Project Manager, shall be maintained on the work and give efficient supervision to the work until its completion. The superintendent shall have full authority to act on behalf of the Contractor, and all directions given to the superintendent shall be considered given to the Contractor. The Project Manager's instructions shall be confirmed in writing upon written request from the Contractor.

4.6 PUBLIC LAND:

The City shall provide the public land shown on the drawings upon which the work under the Contract is to be performed and to be used for right-of-way for access. Any delay in furnishing these lands by the City shall be deemed proper cause for adjustment in the Contract price and in the time of completion.

4.7 LANDS BY CONTRACTOR:

Any additional land and access thereto not shown on the drawings that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the City. The Contractor shall confine his apparatus and storage of materials and operation of his workmen to those areas described in the Drawings and Specifications and such additional areas that he may provide as approved by the Project Manager.

4.8 PRIVATE PROPERTY:

The Contractor shall not enter upon private property for any purpose without obtaining permission, and he shall be responsible for the preservation of all public property, trees, monuments, etc. along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, including public utilities and cable television lines, and shall protect marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed by the Project Manager.

4.9 ASSIGNMENT OF CONTRACT:

Neither the Contractor nor the City shall sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations there under, without written consent of the other party.

4.10 REMOVAL OF CONSTRUCTION EQUIPMENT, TOOLS AND SUPPLIES:

At the termination of the Contract, before Probationary Acceptance of the work by the Project Manager, the Contractor shall remove all of his equipment, tools and supplies from the property of the City. Should the contractor fail to remove such equipment, tools, and supplies, the City shall have the right to remove them, and deduct the cost of removing and storage from any monies owed to the Contractor.

4.11 PERMANENT SUSPENSION OF WORK BY CITY:

The work or any portion thereof may be suspended at any time by the City provided that the City gives the Contractor five (5) calendar days written notice of suspension. Payment for work permanently suspended shall be made in accordance with Section 7.10.

4.12 CITY'S RIGHT TO CORRECT DEFICIENCIES:

If required by the Project Manager, prior to approval of final payment, Contractor shall promptly, without cost to City and as specified by Project Manager, either correct any defective work, whether or not fabricated, installed or completed, or, if the work has been rejected by Project Manager, remove it from the site and replace it with non-defective work. If Contractor does not correct such defective work or remove and replace such rejected work within five (5) calendar days of written notice to the Contractor from the Project Manager, the City may have the deficiency corrected or the rejected work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by Contractor, and an appropriate deductive change order shall be issued. Contractor shall also bear the expenses of making good all work of others destroyed or damaged by his correction, removal or replacement of his defective work.

4.13 CITY'S RIGHT TO TERMINATE CONTRACT AND COMPLETE THE WORK:

The City shall have the right to terminate the employment of the Contractor after giving five (5) calendar days written notice of the termination to the Contractor in the event of any default by the Contractor. In the event of such termination, the City may take possession of the work and of all materials, tools and equipment thereon and may finish the work by whatever method and means it may select. It shall be considered a default by the Contractor whenever he shall:

- A. Disregard or violate material provisions of the Contract Documents or Project Manager's instructions, or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof.
- B. Fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment thereto.
- C. Fail to submit a Completion Schedule as provided by Section 6.3.

In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to City. Such costs incurred by City shall be determined by Project Manager and incorporated in a Change Order.

The Contractor agrees to bear all costs and expenses related to the termination of the contract and the completion of the work, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false, or fraudulent.

Where Contractor's services have been so terminated by City, said terminations shall not affect any rights of City against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by City due Contractor will not release Contractor from liability.

Upon five (5) calendar days written notice to Contractor and Project Manager, City may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the agreement. In such case, Contractor shall be paid for all work executed and any expense sustained plus a reasonable profit as negotiated between the City and the Contractor.

The City shall also have the right to terminate the Contract five (5) calendar days after giving the Contractor written notice due to the onset of seasonal cold weather.

4.14 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT:

The Contractor may terminate Contract upon five (5) calendar days written notice to the City and the Project Manager, for the following reason:

If an order of any court, or other public authority caused the work to be stopped or suspended for a period of ninety (90) calendar days through no act or fault of the Contractor or his employees.

4.15 RIGHTS OF VARIOUS INTERESTS:

Whenever work being done by the City's forces or by other contractors is contiguous to the work covered by this Contract, the respective rights of the various interests involved shall be established by the Project Manager, to secure the completion of the various portions of the work in general harmony.

4.16 SEPARATE CONTRACTS:

The City may let other contracts in connection with the work of the Contractor. The Contractor shall cooperate with other Contractors with regard to storage of materials and execution of their work. It shall be the Contractor's responsibility to inspect all work by other Contractors affecting his work and to report in writing to the Project Manager any irregularities which will not permit him to complete his work in a satisfactory manner. His failure to notify the Project Manager of such irregularities shall indicate the work of other Contractors has been satisfactorily completed to receive his work. The Contractor shall not be responsible for defects of which he could not have known which develop in the work of others after the work is completed. It shall be the responsibility of the Contractor to measure the completed work in place and report to the Project Manager immediately any difference between completed work by others and the drawings.

4.17 SUBCONTRACTORS:

At the time a proposal is submitted, the Contractor shall list the subcontractors proposed for the work. Subcontractors may not be changed except at the written request or with the written approval of the Project Manager. The Contractor is responsible to the City for the acts and omissions of his subcontractors, and of their direct and indirect employees, to the same extent as he is responsible for the acts and omissions of his employees. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the City. The Contractor shall bind every subcontractor by the terms of the Contract Documents.

For convenience of reference and to facilitate the letting of Contracts and subcontracts, the Specifications are separated into titled sections. Such separations shall not, however, operate to make the Project Manager an arbiter to establish limits to the contracts between Contractor and subcontractors.

4.18 WORK DURING AN EMERGENCY:

The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases the Contractor shall notify the Project Manager of the emergency as soon as practicable, but the Contractor shall not wait for instructions before proceeding to properly protect both life and property.

4.19 ORAL AGREEMENTS:

No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.

4.20 COOPERATIVE PURCHASING EFFORT:

Other governmental agencies including state agencies, special districts, counties, municipalities and school districts, etc., may be extended the opportunity to purchase off this Bid with the agreement of the successful vendor(s) and the participating MAPO Agencies and the WSCPA Group. Requests for participation of other Agencies and/or Groups will be coordinated by the MAPO Agency hosting this Bid. The Host Agency will notify the vendor(s) and the Agency and/or Group wishing to participate, in writing. Each agency/group desiring to participate shall establish its own contract, issue its own orders, be invoiced and make its own payments and issue its own exemption certificates as required by the Vendor. It is understood and agreed that the City is not a legally binding party to any contractual agreement made between a MAPO or WSCPA member and the Vendor as a result of this solicitation.

PART 5 - MATERIALS AND WORKMANSHIP

5.1 MATERIALS FURNISHED BY THE CONTRACTOR:

All materials used in the work shall meet the requirements of the respective Specifications, and no material shall be ordered or installed until it has been approved in writing by the Project Manager. All materials not otherwise specifically indicated shall be furnished by the Contractor.

If the Contractor wishes to furnish or use a proposed substitute, he shall make written application to the Project Manager for approval of the substitute certifying in writing that the proposed substitute will perform equally to the functions called for by the general design and identify all variations of the proposed substitute from that specified, stating whether or not its incorporation in or use in connection with the project is subject to the payment of any license fee or royalty, and indicating available maintenance service. The Project Manager will be the sole judge of equality and may require the Contractor to furnish other data about the proposed substitute he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as the City may require which shall be furnished at Contractor's expense.

5.2 STORAGE OF MATERIALS:

Materials shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials shall be located so as to facilitate prompt inspection.

5.3 CHARACTER OF WORKMEN:

The Contractor shall at all times be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman employed by the Contractor or subcontractor who, in the opinion of the Project Manager, does not perform his work in a skillful manner, or appears to be incompetent or who acts in a disorderly or in an intemperate manner shall, at the written request of the Project Manager, be discharged from the work site immediately and shall not be employed again in any portion of the work without the written approval of the Project Manager.

5.4 REJECTED WORK AND MATERIALS:

All materials, which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Project Manager, or are in any way unsatisfactory or unsuited to the purpose for which they are

intended, shall be rejected. Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed within ten (10) calendar days after written notice is given by the Project Manager, and the work shall be re-executed by the Contractor. The fact that the Project Manager may have previously overlooked such defective work shall not constitute an acceptance of any part of it.

5.5 CLEANING UP:

The Contractor shall remove from all public and private property, all temporary structures, rubbish, and waste materials resulting from his operation or caused by his employees, and shall remove all surplus materials leaving the site smooth, clean and true to line and grade.

5.6 GUARANTEE PERIOD:

All material furnished and work performed by the contractor shall be guaranteed for a period of two (2) years from the date of written Probationary Acceptance of the work. The warranty period for landscape plant material and irrigation shall consist of two (2) full growing seasons as defined in section 1.29. The warranty period for landscape plant material and irrigation shall begin from the date of written Probationary Acceptance of landscape plant material and irrigation.

- A. Correction of Faulty Work During Probationary Acceptance Shall Be as Provided in Section 7.17.
- B. The expiration of the guaranty period shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

PART 6 - BONDS AND INSURANCE REQUIREMENTS, LEGAL RESPONSIBILITY AND PUBLIC SAFETY

6.1 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 5. 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.

6.2 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.

6.3 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 5.2 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 5.2 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 5.2 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.
- 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.

6.4 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.

6.5 NOTICE OF CHANGES IN WORK:

If notice of any change affecting the general scope of the work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be the Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to City.

6.6 PATENTS:

If any design, device, material or process covered by letters, patent or copyright is used by the Contractor, he shall provide for such use by legal agreement with the Owner of the patent or a duly authorized licensee of such Owner, and shall save harmless the City from any and all loss or expense on account thereof, including its use by the City.

6.7 PERMITS:

All permits and licenses necessary for the prosecution of the Work shall be secured by the Contractor. Waiver of fees for City projects will be considered on a project-by-project basis.

6.8 LAWS TO BE OBSERVED:

The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself, his subcontractor and all employees. The laws and regulations shall include, but are not limited to the following: City of Northglenn Municipal Code, City of Northglenn Public Right of Way Standards and Specifications, Department of Labor Occupational Safety and Health Administration Standards, Americans with Disabilities Act, Equal Employment Opportunity Act, 2003 International Building Code, 2003 International Plumbing Code, 2003 International Mechanical Code, 1997 Uniform Fire Code, and the 2003 National Electrical Code, as enacted by the City of Northglenn. If the Contractor observes that the specifications or drawings are at variance therein, he shall give Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate written modification.

6.9 WARNING SIGNS AND BARRICADES:

The Contractor shall provide adequate signs, barricades, lights, and watchmen and take all necessary precautions for the protection of the work and the safety of the public. All signs and devices shall conform to the Manual on Uniform Traffic Control Devices. The devices and signs shall be clean, legible, properly mounted and meet a quality standard rating of "acceptable" per the requirements of American Traffic Safety Services Association (ATSSA) Quality Standard for Work Zone Traffic Control Devices. All signs and devices used for night operation shall meet the retroreflective requirements of CDOT Standard Specifications Section 713.04.

When it is necessary to obstruct roadways or pedestrian ways, the Contractor shall submit traffic control plans, in compliance with the Manual of Uniform Traffic Control Devices (MUTCD). All traffic control plans shall be prepared under the supervision of a certified Work Site Traffic Control Supervisor. Documentation of certification shall be submitted with the traffic control plan.

When necessary for public safety and when required by the City, the Contractor shall employ flag persons to control traffic around or through the work site. All flaggers shall be CDOT certified and competent to perform the work.

The Contractor shall be responsible for maintaining all work area signing and barricading required throughout the duration of work. During non-work hours, all signs that are not appropriate shall be removed, covered or turned around so that they do not face traffic.

6.10 SAFETY AND PROPERTY PROTECTION:

The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of

persons and property in the vicinity of the work, in a manner satisfactory to the Project Manager. No road, street, or sidewalk shall be closed to the public except with the permission of the Project Manager and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, storm sewer inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the Project Manager.

6.11 CONTRACTOR'S RESPONSIBILITY FOR SAFETY:

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons who may be affected thereby;
- B. All the work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for its safety and protection. All damage, injury, or loss to any property referred to in paragraphs (b) or (c) above, caused directly or indirectly, in whole or in part, by Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor; except damage or loss attributable to the fault of specifications or to the acts or omissions of City or Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and the Project Manager has issued a notice to the City and the Contractor in accordance with approval of final payment that the work is acceptable.

Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to City.

6.12 EXCAVATIONS:

The Contractor shall comply with all OSHA regulations including but not limited to the regulations contained in 29CFR, Subpart 1926. When excavation (as defined in the OSHA regulations) is required by the Contract, the Contractor shall designate a competent person who shall be on site for the duration of excavation activities. If requested by the Project Manager, the Contractor shall provide all information utilized by the competent person in making any determination on the safety of excavations. The Contractor shall also comply with all state and local regulations governing excavations including C.R.S. 9-1.5-101 et seq.

6.13 CROSSING UTILITIES:

When new construction crosses highways, railroads, streets or utilities under the jurisdiction of the State, County, City or other public agency, public utility or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission must be filed with the City before any work is done. The Contractor will be required to furnish a release from the proper authority before final acceptance of the work.

6.14 SANITARY PROVISIONS:

The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his Subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health and as directed by the Project Manager.

PART 7 - PROGRESS AND COMPLETION OF WORK

7.1 NOTICE TO PROCEED:

Following the execution of the Contract by the City, written Notice to Proceed with the work shall be given to the Contractor. The Contractor shall begin and shall prosecute the work regularly thereafter (unless otherwise directed in writing by the City) with such force as to secure the completion of the work within the time stated in the Contract Documents or Bid.

7.2 CONTRACT TIME:

The Contractor shall complete, in an acceptable manner, all of the work contracted for in the time stated in the Bid. Computation of Contract Time shall commence on the seventh (7th) calendar day following the date of mailing, by regular mail, of the Notice to Proceed and every calendar day following, except as herein provided, shall be counted as a working day.

7.3 SCHEDULE OF COMPLETION:

The Contractor shall submit, within ten (10) calendar days of Notice of Award, suitable schedules which shall show the order in which the Contractor proposed to carry on the work, with dates on which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

7.4 CHANGES IN THE WORK:

The City may, as the need arises, order changes in the work through additions, deletions or modifications without invalidating the Contract. Compensation and time of completion affected by the change shall be adjusted at the time of ordering such change.

7.5 EXTENSION OF CONTRACT TIME:

A delay beyond the Contractor's control occasioned by an Act of God, or act or omission on the part of the City or by strikes, lockouts, or fire may entitle the Contractor to an extension of time in which to complete the work as determined by the Project Manager, provided; however, that the Contractor shall immediately give written notice to the Project Manager of the cause of delay. Requests for extension of time due to inclement weather must be accompanied by statistical evidence from the U.S. Weather Service showing the normal precipitation for the period involved. No extension of time will be granted if the number of days of precipitation which actually occurred during the period in question are less than or equal to the average number of days precipitation of record based on the above referenced statistical evidence.

7.6 NO DAMAGES FOR DELAY:

To the extent allowed by C.R.S. 24-91-103.5, the Contractor shall not be entitled to any damages or additional compensation for any delay in the completion of the work.

7.7 USE OF COMPLETED PORTIONS:

Prior to final payment, the Project Manager may submit a written request to the Contractor to permit the City to use a specified part of the project which the Project Manager believes he may use without significant interference with

construction of the other parts of the project. If Contractor agrees, he will certify to the City and Project Manager that said part of the project is substantially complete. Within a reasonable time thereafter, the City, Contractor and Project Manager shall make an inspection of that part of the project to determine its status of completion and identify on a tentative list any items which may be deficient. If Project Manager does not consider that it is substantially complete he will notify the City and Contractor in writing giving his reasons therefore. The City shall have the right to exclude Contractor from any part of the project which Project Manager has certified to be substantially complete, but the City shall allow Contractor reasonable access to complete or correct items on the tentative list.

7.8 RECORD DRAWINGS:

Contractor shall keep one (1) record copy of all specifications, addenda, modifications, and shop drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to Project Manager and/or City Inspector upon request and shall be delivered to the Project Manager for the City's use upon completion of the project and prior to Final Payment.

PART 8 - MEASUREMENT AND PAYMENTS

8.1 REQUESTS FOR PAYMENT:

A. UNIT PRICE CONTRACTS

The Contractor may request periodically, but not more than once each month, a Request for Payment for work done. The Contractor shall furnish the Project Manager all the necessary information relative to the progress and execution of the work. Each Request for Payment shall be computed by the Project Manager from the work completed on all items listed in the detailed breakdown of contract price, less 10% to be retained until final completion and acceptance of work, and less previous payments. At any time after 75% of the work has been completed, the Project Manager shall have the discretion to reduce the percentage to be retained from progress payments below 10% (ten percent) until final completion and Probationary Acceptance of the work. No such payment request shall be computed when, in the judgment of the Project Manager, the work is not proceeding in accordance with the provisions of the Contract or subcontractors have not been appropriately paid.

If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at the site or at another location agreed to in writing, the Request for Payment shall also be accompanied by such data, satisfactory to City, as will establish City's title to the material and equipment, and protect his interest therein, including applicable insurance.

B. PROGRESS PAYMENT CONTRACTS

At least ten (10) calendar days prior to submitting the first request for payment, Contractor shall submit a progress schedule, a final schedule of shop drawing submission (when applicable), and a schedule of values of the work. These schedules shall be satisfactory in form and substance to the Project Manager. The schedule of values shall include the quantities and unit prices aggregating the contract price, and shall subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedules of values by the Project Manager, it shall be incorporated into the form of application for payment furnished by the Project Manager. Each request for payment shall be computed by the Project Manager from the schedule of values of the work completed, less 10% to be retained until final completion and Probationary Acceptance of work, and less previous payments. At any time after 75% of the work has been completed, the Project Manager shall have the discretion to reduce the percentage to be retained from progress payments below 10% (ten percent) until final completion and Probationary Acceptance of the work. At this time, Contractor may submit partial lien waivers to the Project Manager. No such payment request shall be computed when, in the judgment of the Project Manager, the work is not proceeding in accordance with the provisions of the Contract.

Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to the City at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "liens").

8.2 PROJECT MANAGER'S ACTION ON A REQUEST FOR PAYMENT:

Within ten (10) calendar days of any request for payment by the Contractor, the City shall:

- A. Prepare the request for payment with information as furnished by the Contractor.
- B. Approve such other amount as he shall decide is due the Contractor, informing the Contractor in writing of his reasons for approving the amended amount; or
- C. Withhold request for payment, informing the Contractor in writing of his reasons for withholding it.

8.3 CITY'S ACTION ON AN APPROVED REQUEST FOR PAYMENT:

Within thirty (30) calendar days from the date of approval of a Request for Payment by the Project Manager, the City shall:

- A. Pay the request for payment as approved; or
- B. Pay such other amount in accordance with Section 7.4 as the City shall decide is due the Contractor, informing the Contractor.

8.4 CITY'S RIGHT TO WITHHOLD PAYMENT OF AN APPROVED REQUEST FOR PAYMENT:

The City may withhold payment in whole or in part on an approved Request for Payment to the extent necessary to protect itself from loss on account of any of the following causes:

- A. Damage to another contractor.
- B. Defective work.
- C. Evidence indicating the probable filing of claims by other parties against the Contractor.
- D. Failure of the Contractor to make payments to subcontractors, material suppliers or labor.
- E. Failure of the Contractor to submit lien waiver documents with request of final payment.

Reasons listed above for withholding of payment are shown as examples and are not to be considered as a complete, final list.

8.5 INTEREST ON UNPAID REQUEST FOR PAYMENT:

Should the City fail to pay an approved Request for Payment within thirty (30) calendar days from the date of approval by the Project Manager, and should the City fail to inform the Project Manager and the Contractor in writing of his reasons for withholding payment, the City shall pay the Contractor interest on the amount of the Request for Payment at the rate of six percent (6%) per annum until payment is made.

8.6 RESPONSIBILITY OF THE CONTRACTOR:

Unless specifically noted otherwise, the Contractor shall furnish all materials and services and perform all the work described by the Contract Documents or shall have all materials and services furnished and all the work performed at his expense. It shall be the Contractor's responsibility to pay for:

- A. Replacement of survey benchmarks, reference points and stakes provided by the City under Section 2.9.
- B. Lands provided by Contractor in accordance with Section 3.7.
- C. Insurance obtained in accordance with Sections 5.1 and 5.2.
- D. Performance, Payment, Maintenance and Warranty Bonds obtained in accordance with Section 5.4.
- E. Royalties required under Section 2.10.
- F. Permits and Licenses required of the Contractor and all subcontractors.

8.7 PAYMENT FOR UNCORRECTED WORK:

Should the Project Manager direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount as determined by the Project Manager shall be made to compensate the City for the uncorrected work.

8.8 PAYMENT FOR REJECTED WORK AND MATERIALS:

The removal of work and materials rejected under Section 4.4 and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and he shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.

8.9 PAYMENTS FOR EXTRA WORK:

Unless such extra work is ordered by written change order by the City, claims for extra work shall not be considered. In all cases, the Contractor's itemized estimate sheets showing all labor and material shall be submitted to the Project Manager. The City's order for extra work shall specify any extension of the Contract Time and one of the following methods of payment:

- A. Unit prices or combinations of unit prices which formed the basis of the original contract.
- B. A lump sum based on the Contractor's estimate, accepted by the City.
- C. Actual cost plus 15% for overhead and profit (for the General Contractor only), with prior approval of the City.

8.10 PAYMENT FOR WORK PERMANENTLY SUSPENDED BY THE CITY:

If the work or any part thereof shall be suspended by the City and abandoned by the Contractor as provided in Paragraph 3.11, the Contractor will then be entitled to payment for all work done on the portions so abandoned.

8.11 PAYMENT FOR WORK BY THE CITY:

The cost of the work performed by the City in removing construction equipment, tools and supplies in accordance with Section 3.10 and in correcting deficiencies in accordance with Section 3.12 shall be paid by the Contractor.

8.12 PAYMENT FOR WORK BY THE CITY FOLLOWING ITS TERMINATION OF THE CONTRACT:

Upon termination of the Contract by the City in accordance with Section 3.13, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the Contract Amount shall exceed the cost of completing the work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the work shall exceed the unpaid balance, the Contractor shall pay the difference to the City. The cost incurred by the City as herein provided, and the damage incurred through the Contractor's default, shall be approved by the Project Manager and certified by the City.

8.13 PAYMENT FOR WORK TERMINATED BY THE CONTRACTOR:

Upon suspension of the work or termination of the Contract by the Contractor in accordance with Section 3.14, the Contractor shall recover payment from the City for the work performed, plus losses on plant and materials, plus established profit and damages, as approved by the Project Manager.

8.14 PAYMENT FOR SAMPLES AND TESTING OF MATERIALS:

Samples furnished in accordance with Section 2.8 shall be furnished by the Contractor at his expense. Testing of samples and materials furnished in accordance with Section 2.8 shall be arranged and paid for by the City. If material does not meet the specification requirements, the Contractor shall pay for the tests.

8.15 PROBATIONARY ACCEPTANCE AND FINAL PAYMENT:

When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, the Project Manager shall certify his Probationary Acceptance of the completed work and his approval of the Contractor's final Request for Payment, which shall be the contract price plus all approved additions less all approved deductions and less previous payments made. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the work, following which the City shall authorize payment of the Contractor's final Request for Payment. Such evidence provided by the Contractor shall include lien waivers from any person or entity that has furnished labor, materials, sustenance, tools, rental equipment or machinery, or other supplies used or consumed by a Contractor or Subcontractor in or about the performance of the work

The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Project Manager to assemble and check the necessary data.

8.16 TERMINATION OF CONTRACTOR'S RESPONSIBILITY:

The Contract will be considered complete when all work has been finished, the final inspection made by the Project Manager, and the project Probationary Acceptance issued in writing by the City. The Contractor's contractual responsibility shall then cease, except as set forth in his Performance, Payment, Maintenance and Warranty Bond, as required by the Guaranty Period in accordance with Section 4.6 and as provided for in Section 7.17.

8.17 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT:

The approval of the final Request for Payment by the Project Manager and the making of the final payment by the City to the contractor shall not relieve the contractor of responsibility for faulty workmanship. The City shall promptly give notice of faulty materials or workmanship and the Contractor shall promptly replace any such defects which occur or which are discovered within two (2) years from the date of written Probationary Acceptance of the work. The Project Manager shall decide all questions arising under this paragraph, and all such decisions shall be considered final.

PART 9 - BID REQUIREMENTS AND CONDITIONS

9.1 CONTENTS OF BID FORMS:

Prospective Bidders are furnished Bid forms herein which state the location and description of the contemplated construction and show the approximate estimate of the quantities of the various kinds of work to be furnished, with a schedule of items for which bid prices are asked.

The unit prices or lump sum amounts bid shall include full compensation for furnishing all supervision, labor, materials, tools, and equipment and doing all work completed in place as shown on the Drawings or stipulated in these Specifications for that particular item of work. Unit Price Sheets must be filled out when they are enclosed within the Specifications for a basis of comparing bids.

9.2 APPROXIMATE ESTIMATE:

The quantities given in the Invitation to Bid, and Contract Unit Price forms are approximate only, being given as a basis for the comparison of Bids, and the City does not, expressly or by implication, agree that the actual amount of work will correspond therein, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Project Manager. No allowance will be made for anticipated profit on work which is deleted or decreased. It shall be the Contractor's responsibility to verify all quantities and make it known to the City if any discrepancies arise at the time of Notice of Award. Failure to do so shall constitute the Contractor completing the work prescribed and any additional work to conform to the Specifications at his own expense.

9.3 EXAMINATION OF DRAWINGS, SPECIFICATION, AND SITE OF WORK:

The Bidder shall examine carefully the site of the work contemplated and the Bid, Drawings, Specifications, and Contract Forms contained therein. The submission of a signed Bid will be conclusive evidence that the Bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality and quantities of work to be performed and materials to be furnished, and of the requirements of the Bid, Drawings, Specifications and other Contract Documents.

Where investigation of subsurface conditions has been made by the City with respect to foundation or other design, Bidders may inspect the records of the City as to such investigation, including examination of samples and drill cores, if any.

Logs of a test boring showing a record of the data obtained by the City's investigation of subsurface conditions are made for the purpose of design. The City assumes no responsibility whatsoever in respect to the sufficiency of test borings, or accuracy of the log of test borings, or other preliminary investigations, or of the interpretations thereof. There is no guarantee expressed or implied that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unforeseen developments may not occur.

Making such information available to Bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Article, and Bidders must satisfy themselves through their own investigations as to conditions to be encountered. No additional compensation shall be paid to Contractor due to unforeseen surface or subsurface conditions and Contractor specifically represents that he has considered this fact in making this Bid.

No information derived from such inspection of records of preliminary investigations made by the City, or from the Project Manager, or from his assistants, or from the maps, Specifications, profiles or Drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the City may be inspected at the office of the City Manager, 11701 Community Center Drive, Northglenn, Colorado 80233, during normal business hours.

9.4 BID FORM:

The Bid Form is bound herein, which, when filled out by the Bidder and executed, shall be submitted as his Bid. All Bids should give the prices proposed in figures in the spaces provided, and shall be signed by the Bidder, who should fill out all blanks in the Bid Form as therein required. If there is a discrepancy between an item unit bid price and the item total Bid price, the given item unit price entered on the Bid Form shall govern and the item total bid price corrected shall constitute the actual bid price submitted.

All Bid forms shall be obtained from the City. Such forms are not transferable.

A copy of each addendum to the Specifications or Drawings shall be referred to in the appropriate section of the Bid Form.

9.5 QUERIES ON BIDDING:

Questions regarding the Specifications or Drawings, or any other portion of the Contract or any addenda thereto shall be directed, as appropriate, to the Project Manager.

9.6 REJECTION OF BIDS:

Bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. A Bid in which the prices, in the opinion of the Project Manager and the Purchasing Division, are unbalanced, may be rejected.

When a Bid is signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a written authorization of Power of Attorney should be on file with the City prior to opening Bids or submitted with the Bid; otherwise, the Bid may be rejected as irregular and unauthorized.

9.7 BID BOND:

Not applicable.

9.8 WITHDRAWAL OF BID:

Any Bid may be withdrawn at any time prior to the time fixed in the Public Notice for the Opening of Bid. The request shall be executed by the Bidder or his duly authorized representative. The withdrawal of a Bid does not prejudice the right of the Bidder to file a new Bid. This Article does not authorize the withdrawal of any Bid after the time fixed in the Public Notice for the opening of the Bids.

9.9 PUBLIC OPENING OF BIDS:

Bids will be opened and read publicly at the time and place indicated in the Invitation to Bid.

9.10 DISQUALIFICATION OF BIDDERS:

More than one Bid Form from an individual, firm, partnership, corporation, or a combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the work contemplated may cause the rejection of all Bids in which such Bidder is interested. If there is reason for believing that collusion exists among the Bidders, none of the participants in such collusion will be considered for award of the Contract and all bid documents from those suspected of collusion shall be turned over to the State of Colorado Attorney General's office.

9.11 ADDENDUM:

Addenda may be issued prior to opening of Bids and shall become a part of the original Specifications and Drawings: The additions or changes contained in such addenda shall be considered by the Bidder in preparation of his bid. These addenda will be sent to each prospective Bidder at the address indicated in his application for a Bid Form. A copy of each addendum so issued shall be attached to the Specifications containing the Bid submitted by the Bidder to the City, or noted in the space allocated for addenda acknowledgment.

9.12 LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:

The successful Bidder, upon his failure or refusal to execute and deliver the Contract and Bonds required within ten (10) calendar days from the date of Notice of Acceptance of his Bid, shall forfeit to the City as liquidated damages for such failure or refusal, the security deposited with his Bid.

9.13 BID CERTIFICATION

All prospective contractors, must complete the "Prospective Contractor's Certificate Regarding Employing or Contracting with Illegal Aliens" *prior to* executing a contract for services with the City. This certification is included with the bid documents and must be completed and submitted with the contractor's bid proposal.

This certification states that, as of the date of the certification, the prospective contractor does not knowingly employ or contract with any illegal aliens, and that the contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired in the United States through the basic pilot program administered by the United States Department of Homeland Security.

9.14 AMERICANS WITH DISABILITIES ACT OF 1990

THE CITY OF NORTHGLENN DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, RELIGION, AGE OR DISABILITY IN EMPLOYMENT OR PROVISION OF SERVICES.

IT SHALL BE A CONDITION OF THE CITY OF NORTHGLENN THAT ANY COMPANY, FIRM OR CORPORATION SUPPLYING GOODS OR SERVICES EITHER BY CONTRACT OR PURCHASE ORDER MUST BE IN COMPLIANCE WITH THE APPROPRIATE AREAS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AS ENACTED AND FROM TIME TO TIME AMENDED AND ANY OTHER APPLICABLE FEDERAL REGULATION. A SIGNED, WRITTEN CERTIFICATE STATING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT MAY BE REQUESTED AT ANY TIME DURING THE LIFE OF ANY PURCHASE ORDER OR CONTRACT AND WITH ANY NEW PURCHASE ORDER OR CONTRACT ISSUED BY THE CITY OF NORTHGLENN.

PART 10 - ILLEGAL ALIENS

10.1 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 Agreement.

10.2 PROHIBITED ACTS:

Contractor shall not:

- A. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
- B. 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.

10.3 VERIFICATION:

- A. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.
- B. 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.

- C. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:
1. 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
 2. 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.
- D. If Contractor does not currently employ any employees, Contractor shall sign the NO Employee Affidavit attached hereto.
- E. If Contractor wishes to verify the 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.

10.4 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.

Rev. December 15, 2009

END OF SECTION 007200