

**PARKS, RECREATION & CULTURAL SERVICES MEMORANDUM  
#18-2022**

**DATE:** Sept. 12, 2022

**TO:** Honorable Mayor Meredith Leighty and City Council Members

**THROUGH:** Heather Geyer, City Manager *hmg*

**FROM:** Amanda J. Peterson, Director of Parks, Recreation & Culture *ajp*  
Jesse Mestrovic, Parks & Recreation Project Manager

**SUBJECT:** CR-129 – Sensory Playground Improvements

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**PURPOSE**

To consider CR-129, a resolution approving a contract with Recreation Plus in the amount of \$699,961 for improvements to the Sensory Playground at E.B. Rains Jr. Memorial Park.

**BACKGROUND**

The Sensory Playground was initially constructed in 2003, with minor upgrades in 2013. This new project includes the replacement of many worn play elements and the complete replacement of the poured-in-place safety surfacing. Portions that are in good condition would remain.

The existing structure is manufactured by Little Tikes. To ensure that any new equipment would be compatible with the existing structure, a Request for Proposal (RFP) was issued specifying Little Tikes equipment. Four responses were submitted on May 13, 2022; Recreation Plus was the lowest bidder and the only bidder to include Little Tikes equipment in their proposal. The three other proposals were in excess of the identified budget and proposed a complete replacement of the playground rather than the replacement of the elements identified in the RFP. Staff worked with Recreation Plus as the lowest responsible bidder to refine their proposal to align within the identified project scope and budget.

**BUDGET/TIME IMPLICATIONS**

Funding in the amount of \$725,000 is available for this project, including \$375,000 from an Adams County Open Space grant, \$100,000 in the Capital Projects Fund and \$250,000 in the Conservation Trust Fund.

	<b>Amount</b>
Conservation Trust Fund	\$250,000
ADCO Grant	\$375,000
CIP Fund	\$100,000
<b>Total available funding</b>	<b>\$725,000</b>
Recreation Plus Contract	(\$699,961)
<b>Budget Remaining</b>	<b>\$25,039</b>

The design process would begin immediately. The current lead time for Little Tikes equipment is estimated to be up to 42 weeks. Staff would work with the contractor to schedule construction as soon as equipment is procured. Once construction begins, installation of the new equipment and poured-in-place surfacing would take approximately 12 weeks.

**STAFF RECOMMENDATION**

Attached is CR-129, a resolution that, if approved, would authorize the Mayor to execute a contract between the City and Recreation Plus for the design and construction of improvements to Sensory Playground in an amount not to exceed \$699,961, and authorizes the City Manager to approve minor changes in scope and execute relevant change orders up to the approved expenditure limit of \$725,000. Staff recommends approval of CR-129.

**STAFF REFERENCE**

If Council members have any questions, please contact Amanda Peterson, Director of Parks, Recreation & Culture, at [apeterson@northglenn.org](mailto:apeterson@northglenn.org) or 303.450.8950.

CR-129 – Sensory Playground Improvements

Design-Build Contract

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

RESOLUTION NO.

No. CR-129  
Series of 2022

\_\_\_\_\_  
Series of 2022

A RESOLUTION APPROVING A DESIGN-BUILD CONTRACT BETWEEN THE CITY OF NORTHGLENN AND RECREATION PLUS FOR THE SENSORY PLAYGROUND IMPROVEMENTS PROJECT

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

Section 1. The Design-Build Contract between the City of Northglenn and Recreation Plus, attached hereto, in the amount of \$699,961.00 with a contingency of \$25,039.00 for a total amount not to exceed \$725,000.00 for the E.B. Rains, Jr. Memorial Park Sensory Playground 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 \_\_\_\_\_, 2022.

\_\_\_\_\_  
MEREDITH LEIGHTY  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**DESIGN-BUILD CONTRACT**

Between

The City of Northglenn, Colorado

And

Recreation Plus

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 AND SCHEDULE OF  
VALUES
- C BONDS
- D PROJECT CRITERIA
- E PROPOSAL
- F INSURANCE REQUIREMENTS

**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 Recreation Plus (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 E.B. Rains Jr. Memorial Park Sensory Playground Renovation 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.

Because time is of the essence and delayed performance causes a compensable, yet difficult to precisely ascertain, damage to the City and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in the Design-Build Contract, as modified through approved change orders, Design-Builder shall be assessed liquidated damages at the rate of \$2,000.00 per day, which constitute a reasonable estimate of the actual damages such delay would cause the City.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than 300 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.)*

- Stipulated Sum 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 N/A

OMITTED

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

OMITTED

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

§ 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 \$699,961. *(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 six hundred ninety-nine thousand nine hundred sixty-one Dollars (\$699,961) 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 last day of the month, the City shall make payment to the Design-Builder not later than the last 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 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 N/A

OMITTED

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

OMITTED

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

§ 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 five percent (5%). 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 Ten percent (10%). 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:

Recreation Systems II, Dave Garner

§ 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  
Jesse Mestrovic  
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:

Miriam or Molly Hootstein

§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:

N/A

§ 8.1.3 The Project Criteria including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the City, as set forth in Exhibit D.

§ 8.1.4 The Design-Builder's Proposal, dated May 12, 2022, as set forth in Exhibit E.

§ 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, Cost of the Work.

§ 8.1.9 Exhibit C, Bonds.

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

Exhibit F, Insurance Requirements

**IN WITNESS WHEREOF**, this Design-Build Contract is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the City.

CITY OF NORTHGLENN

\_\_\_\_\_  
Meredith Leighty, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

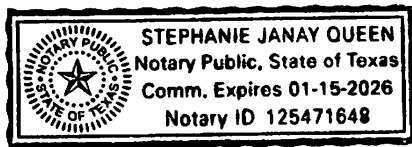
Recreation Plus  
Company Name  
*Travis Lea*  
Signature  
President  
Title  
Travis Lea  
Printed Name

Texas  
STATE OF ~~COLORADO~~ )  
COUNTY OF Dallas ) ss.

The foregoing document was acknowledged before me this 1 day of September, 2022 by Travis Lea as President of the Recreation Plus.

WITNESS my hand and official seal.

My Commission Expires: 01.15.2026



*Stephanie Janay Queen*  
Notary Public

**EXHIBIT A  
TERMS AND CONDITIONS  
to the  
DESIGN-BUILD CONTRACT  
Between  
The City of Northglenn, Colorado  
And  
Recreation Plus**

Project: E.B. Rains Jr. Memorial Park Sensory Playground Renovation Project

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
Northglenn, CO 80233

THE DESIGN-BUILDER:  
Recreation Plus

**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.3.17.3 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 provision 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. If the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by the Design-Builder, the Architect, Contractor or Subcontractor is providing architectural, engineering, surveying or other design services under this the Design-Build Contract, such entities' obligation to defend, indemnify and hold harmless the City may be determined only after liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement, as provided by C.R.S. § 13-50.5-102(8)(c), as amended.

#### **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.I.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 or the Cost of the Work plus Design-Builder'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. Upon final acceptance of the Work, the City shall make final payment pursuant to C.R.S. § 38-26-107.

§ 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.11.

§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 be 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 GOVERNMENTAL IMMUNITY

The City and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this the Design-Build Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

#### § A.13.8 SUBJECT TO ANNUAL APPROPRIATION

Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year. Further, this Design-Build Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and neither the City nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the City Council of the City of Northglenn. The City acknowledges that sufficient funds have been appropriated to pay the Contract Sum, including authorized adjustments, but Design-Builder shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the City.

### **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.

**EXHIBIT B**  
**Determination of the Cost of the Work and Schedule of Values**  
to the  
**DESIGN-BUILD CONTRACT**  
Between  
**The City of Northglenn, Colorado**  
And  
**Recreation Plus**

Project: E.B. Rains Jr. Memorial Park Sensory Playground Renovation Project

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
Northglenn, CO 80233

THE DESIGN-BUILDER:  
Recreation Plus

Determination of the Cost of the Work – Cost of the Work Plus Design-Builder’s Fee with a  
Guaranteed Maximum Price

**ARTICLE B.1: CONTROL ESTIMATE**

**OMITTED**

**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.

**SCHEDULE OF VALUES  
Payment Expectations**

The following schedule of values shall be presented on each Payment Application:

**Item A: Planning Services (Included)** – conceptual plans & final plans

**Item B: Design Services (Included)** – survey, construction drawings, specifications

**Item C: Play Equipment (\$156,042)** – play structures, equipment, furniture, etc.

- billable upon delivery

**Item D: Safety Surfacing (\$303,119)** – Pour In Place (PIP) Rubber Safety Surfacing

- billable upon installation

**Item E: Construction (\$240,800)** – mobilization/bonds/insurance, site prep and earthwork, equipment delivery and installation, and construction material testing

- progress billing



**Owner:** City of Northglenn  
 11701 Community Center Drive  
 Northglenn, CO 80233-8061

**Payment Application and Certification**

<b>Project:</b> Project Name _____ Address _____ City, State Zip _____	<b>Payment Application No.:</b> _____ <b>Period From:</b> _____ <b>Period To:</b> _____ <b>Project Number:</b> _____ <b>Contract Date:</b> _____  <b>Project Manager:</b> Company _____ Address _____ City, State Zip _____	<b>Distribution:</b> <input type="checkbox"/> Owner <input type="checkbox"/> Construction Manager <input type="checkbox"/> Project Manager <input type="checkbox"/> Contractor
<b>Contractor:</b> Company _____ Address _____ City, State Zip _____		

Application for Payment Summary	Certification for Payment																																																									
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">1. Original Contract Sum</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">-</td> </tr> <tr> <td><b>2. Net Change By Change Orders</b></td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>-</b></td> </tr> <tr> <td>a. Total changes approved in previous months</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Additions</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="padding-left: 20px;">Deductions</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>b. Total changes approved this month</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Additions</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="padding-left: 20px;">Deductions</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>3. Contract Sum To Date (Line 1 + Line 2)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>4. Total Completed and Stored (Column G, page 2)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td><b>5. Total Retainage</b></td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>-</b></td> </tr> <tr> <td>a. Completed Work Retainage</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="padding-left: 20px;">(Retainage for Column D + Column E, page 2)</td> <td></td> <td></td> </tr> <tr> <td>b. Stored Material Retainage</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="padding-left: 20px;">(Retainage for Column F, page 2)</td> <td></td> <td></td> </tr> <tr> <td>6. Total Completed and Stored Less Retainage (Line 4-Line 5)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>7. Less Previous Payment Applications (Line 6 of previous application)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>8. Current Payment Due (Line 6 less Line 7)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>9. Balance to Finish, Including Retainage (Line 3 less Line 6)</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> </table>	1. Original Contract Sum	\$	-	<b>2. Net Change By Change Orders</b>	<b>\$</b>	<b>-</b>	a. Total changes approved in previous months			Additions	\$	-	Deductions	\$	-	b. Total changes approved this month			Additions	\$	-	Deductions	\$	-	3. Contract Sum To Date (Line 1 + Line 2)	\$	-	4. Total Completed and Stored (Column G, page 2)	\$	-	<b>5. Total Retainage</b>	<b>\$</b>	<b>-</b>	a. Completed Work Retainage	\$	-	(Retainage for Column D + Column E, page 2)			b. Stored Material Retainage	\$	-	(Retainage for Column F, page 2)			6. Total Completed and Stored Less Retainage (Line 4-Line 5)	\$	-	7. Less Previous Payment Applications (Line 6 of previous application)	\$	-	8. Current Payment Due (Line 6 less Line 7)	\$	-	9. Balance to Finish, Including Retainage (Line 3 less Line 6)	\$	-	<p>Contractor certifies that the amount requested on this Payment Application is based on work completed in accordance with the terms of the contract for Project No. January 0, 1900</p> <p>Contractor Signature:</p> <p>By: _____ Date: _____</p> <p>Amount Certified: \$ _____ -</p> <p>Project Manager Signature:</p> <p>By: _____ Date: _____</p> <p>Construction Manager Signature:</p> <p>By: _____ Date: _____</p> <p>Notary Signature:</p> <p>By: _____ Date: _____</p>
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Owner: City of Northglenn  
 11701 Community Center Drive  
 Northglenn, CO 80233-8061

**Payment Application Detail Sheet**

A	B	C	D	E	F	G	H	I	J
Item No.	Description of Work	Scheduled Value	Previous Work	Work Completed This Period	Presently Stored Materials	Total Completed and Stored to Date	Percent Complete	Balance to Finish	Total Retainage
					(Not in D or E)	(D+E+F)	(G/C)	(C-G)	0%
1		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
2		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
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31		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
32		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
33		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
34		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
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36		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -
<b>Total</b>		\$ -	\$ -	\$ -	\$ -	\$ -	<b>0.00%</b>	\$ -	\$ -

**EXHIBIT C  
BONDS  
to the  
DESIGN-BUILD CONTRACT  
Between  
The City of Northglenn, Colorado  
And  
Recreation Plus**

Project: E.B. Rains Jr. Memorial Park Sensory Playground Renovation Project

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
Northglenn, CO 80233

THE DESIGN-BUILDER:  
Recreation Plus

**ARTICLE C.1**

The Design-Builder shall provide surety bonds in the form attached here.

§ C.1.1 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.

**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.
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

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



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**EXHIBIT D – PROJECT OVERVIEW, PROPOSAL REQUIREMENTS, SCOPE OF SERVICES****I. PROJECT OVERVIEW**

The City of Northglenn, Department of Parks, Recreation & Culture is interested in selecting a Design-Build Team (DBT) to demo, design, furnish, renovate, construct, and refurbish select portions of the Sensory Playground at E.B. Rains Jr. Memorial Park through the Request for Proposal (RFP) process. The intent is to design, construct, refurbish, and replacement of the playground elements during the 2022 fiscal year. This project will occur at E.B. Rains Jr. Memorial Park. The park is the gem of the city and the area is utilized at all hours and seasons of the year. Safety of our residents and visitors is paramount.

The project consists of removing and replacing all playground surfacing; and design, replace, and refurbish all Little Tikes playground equipment and park amenities that have been identified as damaged or in need of replacement. This playground was initially designed in 2001 to be a fully accessible playground. Special care should be taken to incorporate playground components that go above and beyond ADA requirements. The project will include all appropriate equipment, site furnishing, entrance gateway enhancements, landscaping, and park amenities for turnkey operation.

The DBT will evaluate the site and develop a preliminary concept design for the project, each of which can be constructed within the project budget. Preliminary concept plans shall be submitted with the DBT's final proposal. The final design is expected to be developed in a collaborative manner between the DBT and the City. Once a final design is submitted and approved, the selected DBT will prepare construction drawings and specifications for the site and accessory items. The construction drawings must be stamped by an engineer licensed with the State of Colorado and submitted for review and permitting. The DBT will coordinate and construct the project. The DBT will be responsible for maintaining the schedule and budget. The DBT will be liable and responsible for the removal and disposal of existing equipment as well as the design, fabrication, shipping, taxes, installation, construction, and safety of the project.

**DEFINITIONS**

For the purposes of this RFP, the terms in quotation marks set forth below have the following meanings:

- "Bidder" means the person, firm, or corporation from whom the solution is being quoted or ordered.
- "City" means the City of Northglenn.
- "City Council" means the Council of the City of Northglenn.
- "Consultant" means the successful Bidder who has been awarded all or part of this RFP and, who enters into a written contract with the City to perform the work under the RFP.
- "Contract Administrator" means a person duly authorized by the City in writing to represent the City in connection with this Project.
- "Contract" or "Contract Documents" means the Contract entered into by the successful Bidder(s) with the City to perform the work of the RFP.

- "Evaluation Team" means the City personnel named to evaluate the Proposals received in response to this RFP.
- "Mandatory" and "must" means a requirement that must be met in order for the Proposal to receive consideration.
- "Proposal" means the offer Proponents are required to provide in response to this RFP.
- "RFP" means this Request for Proposals, as same may be amended, supplemented or modified from time to time by the City.
- "Should" or "desirable" means a requirement having a significant degree of importance to the objectives of the RFP.
- "Teams(s)" means the private sector firms or consortia that provide Proposals to the City in response to this RFP.

## **II. PROPOSAL REQUIREMENTS**

A mandatory pre-bid meeting is scheduled on **28th Day of April 2022, at 11:00 am**. The meeting will be held at E.B. Rains Jr. Memorial Park, located at 11700 Community Center Drive, Northglenn, CO. All prospective bidders are required to attend this meeting. Failure to be in attendance may disqualify any vendors from consideration of the E.B. Rains Park & Playground Renovation Project.

The Consultant shall submit final digitally in one PDF file via email: [rfp@northglenn.org](mailto:rfp@northglenn.org). For inquiries on the project, please email Project Manager, Jesse Mestrovic, at [JMestrovic@northglenn.org](mailto:JMestrovic@northglenn.org).

The proposal is not intended to be an expansive or elaborate document. City staff will expect the proposal to be thoughtfully composed and easy to understand. The body of the proposal shall be no more than a dozen (12) pages, not including cover letter, current rate sheet, and resumes. Resumes should be formatted identically and placed in the appendix.

### **The proposal shall include the following items:**

- a. **Title Page:** Provide the title of the Proposal being submitted, the RFP number, submittal date, and the name and logo of the company or companies submitting the Proposal.
- b. **Cover Letter:** Letter must include statement certifying that the financial details in your Proposal will remain valid until 120 days from date of Proposal submission.
- c. **Table of Contents:** List all sections, sub-sections and supporting appendices. Page number cross-references are to be included at a detailed level.
- d. **Introduction/Executive Summary:** Provide detailed information regarding relationships, partnerships or associations of any kind that have been made regarding this opportunity, for this or any future phases of the Project.
- e. **Project Team:** A detail description of the DBT that are undertaking the work, and the role of each consultant/contractor in the project. The proposal should state whether the proposed consultants/contractor have previously worked together and in what capacity.
  - i. Identify the individuals and their respective labor rate from each consultant who will be involved in the project and describe their project specific responsibilities.
  - ii. Include, but not limited to the following:
    1. Project Manager
    2. Primary party responsible for playground design, demolition, and construction of the playground renovation project.
    3. Other (landscape architect, engineer, etc.)
- f. **Project Purpose**

The City of Northglenn is seeking a Design-Build Team to design, and construct identified renovations at the playground. Please carefully read the following information that details the



City’s expectation in relation to the project scope of work. The selected contractor(s) will provide the city with professional services to realize the successful implementation of all aspects of this scope.

**g. Scope of Work**

The City of Northglenn is seeking proposals for a Design-Build Team to design and renovate the playground area at E.B. Rains Park. The DBT should thoroughly explain proposed means and methods to perform each objective. Include information on testing requirements, data to be collected, equipment to be used, submittals, meetings and any other pertinent information associated with each objective. Descriptions should clearly state the base intent of the proposal and all items included followed by any value-added services that may be included and are considered beyond the intended scope of work as stated in this document or any amendments. Any items of work within this proposal that limit the quantity, time, materials, or units allocated shall be clearly stated with the maximum quantity of each listed as applicable.

- i. Explain in detail the DBTs vision for the renovation of the Sensory Playground at E.B Rains Jr. Memorial Park
  - 1. Explain how the design will exceed ADA standard.
- ii. Explain in detail how the playground renovation layout and design will take place and integrate the new upgrades and playground enhancements into the existing park.
- iii. Explain the policies and procedures for the quality control and assurances as it specifically relates to the construction of the project and compliance with permitting agencies, profession/industry standards and any other pertinent requirements.
- iv. Describe approach to reducing overall project costs. Describe the operational, material quality, technical and/or cost benefit to incorporating value engineered items.
- v. The DBT shall include a proposed project schedule for the project.
- h. Preliminary Concept Design
  - i. The proposal(s) shall provide preliminary conceptual design with a list of equipment, playground layout, and other site amenities renovations or additions.
  - ii. The preliminary concept design will serve as a baseline as this design-build project evolves.

**III. PROJECT RATIONAL & SCOPE**

**a. Objectives**

- i. The City of Northglenn, hereinafter referred to as the “City”, is beginning the process to select a qualified and experienced DBT for the purposed of design and construction of the renovation of the Sensory Playground.
  - 1. **Playground Renovations:** playground design, demolition, renovation/replacement of the playground surfacing and equipment.
- ii. Through this final Request for Proposals, the city seeks to:
  - 1. Specify the terms and conditions that would govern any resulting contracts and negotiations.
  - 2. Select successful team(s).
- iii. This Request for Proposals states the instructions for submitting proposals, and the procedure and criteria by which a successful will be selected.

**b. Project Locations**

- i. E.B. Rains Jr. Memorial Park is located at 11700 Community Center Drive in Northglenn, CO. The Sensory Playground is located on the south side of the park.
- ii. See Attachment #1 for the site location.

- iii. The DBT should carefully examine the site of the proposed work prior to submission of the RFP and make all necessary investigations to inform themselves thoroughly as to all potential difficulties involved in the completion of all work required pursuant to mandates and requirements of this RFP and the Agreement.

**c. Scope of Work**

i. Planning

- 1. The DBT will be responsible for the analysis of the project site and shall provide a recommendation for the most appropriate equipment and site plan based on safety, access, experience, economic feasibility, and adjacent structures.
- 2. Based upon site analysis, Scope of Work as written in the RFP, and the mandatory pre-bid meeting DBT will prepare site concepts for each site for the final RFP proposal. City staff may use the concept designs to solicit public input during the final selection process
- 3. The DBT will be responsible for revisions to the selected concept plan and preparing final concept plan.
- 4. The DBT will provide approximate construction schedule for concept selected.

ii. Base Proposal

- 1. Provide submittals for all project components for review and approval by the City.
- 2. Mobilization.
- 3. Existing Conditions Survey and Geo-technical Analysis to be provided by the City.
- 4. Site Protection.
  - a. It shall be the Contractor's responsibility to secure the project site and all equipment throughout the duration of construction activities.
- 5. Demotion & Disposal.
  - a. R&D all identified playground equipment, concrete footings, and existing playground surfacing.
    - i. Add or remove base material necessary for adequate compaction and drainage.
- 6. Prepare final design and construction documents based on City staff input and public input.
- 7. Proposed Improvements.
  - a. **Sensory Playground Renovations at E.B. Rains Jr. Memorial Park** – Design, renovate, and install playground equipment.
    - i. Remove and replace all playground safety surfacing with pour in place (PIP) rubber surfacing.
      - 1. Provide color mixture and pour in place design options (100% color mix with custom design desired as primary option)
    - ii. Remove and replace all the playground equipment in Area 1.
    - iii. Remove, refurbish, renovate and replace select 5–12-year-old equipment in Area 2.
    - iv. Remove and replace all of the equipment in Area 3 with a new theme/design.

- v. Remove benches and engineered wood fiber (EWF) and add additional climbing equipment to Area 4.
- vi. Remove swings, refurbish, renovate, and replace select 2–5-year-old play equipment in Area 6.
- vii. Remove all benches and identified site furniture throughout playground area and replace with new site furniture.
- viii. Playground improvements shall meet or exceed ADA and ASTM 1951 (Determination of Accessibility of Surface Systems Under and Around Playground Equipment, Wheelchair Maneuverability) requirements.
- ix. This project and the proposal cost shall include all design, approved plan meetings, all required state and city codes, all labor, all materials, and disposal costs and also include the following:
  - 1. Planning & Design fees
  - 2. Plan preparation and state approval
  - 3. All required permits (fees to be waived for City permits)
  - 4. General clean-up and landscaping enhancements
  - 5. Final design may be adjusted by the City.

iii. Construction

- 1. Renovate the Sensory Playground at E. B. Rains Jr. Memorial Park within the designated location.
  - a. The DBT shall provide work trailer (if applicable), storage, construction signage, safety and first aid, temporary utilities (toilets, power, telephone, etc.), cost of hooking up utilities at jobsite, temporary improvements related to maintain access, temporary water (City will provide a meter), and all necessary equipment to build the project.
  - b. The DBT will provide and maintain a secure work area which should include at a minimum a 6 ft high chain link fence and appropriate signage. Fencing will be installed to keep the work area safe at all times during construction. Safety and security of the site is the responsibility of the DBT.
  - c. The DBT shall be responsible for coordination with applicable agencies to ensure that underground utilities and services are not impacted by the proposed design or construction.
  - d. The DBT shall be responsible for the removal of boulders and earthwork, demolition and site preparation.
  - e. The DBT shall be responsible for furnishing labor, equipment, supplies, and materials.

2. Demolish and install the identified sensory playground features and site amenities.
  - a. The DBT shall be responsible for the removal and demolition and protection of site that will remain in place.
  - b. The DBT shall be responsible for all work to fabricate, construct and install all aspects of the park into the existing park layout.
  - c. The DBT will be responsible for all construction work including, but not limited to, earthwork, foundation, concrete, and construction and installation of playground.
  - d. The DBT will be responsible for the construction to incorporate the new amenities into the existing park, which will include but not limited to any landscape, grading, drainage, and irrigation design, replacement and/or modifications to the existing site area, and protection of existing non-hazard mature trees.
  - e. All construction testing (compaction, concrete, etc.) will be the responsibility of the DBT and shall be included in the proposed overall cost of the project.
  - f. The DBT will be responsible for all site restoration.
  - g. All work must be completed in a mutually agreed upon timeline.
  - h. The DBT is responsible for obtaining all applicable permits prior to mobilization and construction.
  - i. Warranties shall include a minimum of two years on all items, except those previously noted as requiring a longer warranty period.
3. The DBT shall provide final as-built drawings of the Sensory Playground Renovations. Renovations and improvements associated with the project. As-built drawings should incorporate the City's existing available drawings. The consultant is not responsible for verification of the accuracy of the existing drawings; however, the as-built drawings should be accurate and complete enough such that they may be used for future design improvements.

iv. Deliverables

1. Preliminary drawings –PDF electronic drawings, and AutoCAD format.
2. Construction drawings –PDF electronic drawings, and AutoCAD format.
3. As-built drawings –PDF electronic drawings, and AutoCAD format.
4. The budget for the project shall include all soft and hard costs at a minimum but not limited to: bonds, insurance, permits, planning, the design, mobilization, demobilization, demolition, site preparation, drainage, fabrication, installation, construction, construction testing, fencing, site amenities, landscaping, irrigation, all related materials, work, and equipment required to complete the work.

v. Information Available

1. Vicinity Maps (Attachment #1)
2. Existing Utility Maps (Attachment #2)
3. Existing Irrigation Maps (Attachment #3)
4. Existing As-Built (Attachment #4)
5. Sensory Playground Grant Application (Available Upon Request)

**IV. CONSULTANT REQUIREMENTS**

- a. The DBT preparing proposals should demonstrate a high level of competence in park design and construction, with a demonstrated ability to work effectively with: public agencies, area residents and other stakeholders. The selected DBT should have demonstrated ability to

provide high quality services on time and within budget. Provide examples and references. The City of Northglenn requires certain minimum qualifications in insurance coverage, indemnification, and financial standing.

- b. Provide the name, address, telephone number, fax number, email address, and mailing address of the primary contact, and, if available, a designated alternate contact person, in the event of any absence of the primary contact. Provide resumes of all team members including the supporting role each individual will provide during the course of the project(s). Please include all subcontractors that may be part of this proposal and their proposed role.
- c. All work is to be performed under the direction and supervision, appropriate to the task, of a Certified Playground Safety Inspector (CPSI).
- d. No consultant, subconsultant, sub-contractor will be accepted if any of the consultant's, sub-consultant's, or subcontractor's is in arrears to the City, or has any claims, arbitration proceedings, or lawsuits pending, outstanding, or threatening to the City.
- e. Insurance Requirements: The DBT will be required to procure and maintain, at his/her own expense and without cost to the City of Northglenn, the kinds and minimum amounts of insurance as described in the Design Build Contract.
- f. Indemnification: Refer to the Design Build Contract.

**V. SELECTION PROCESS**

- a. The City's reviews the proposal for completeness and compliance with the proposal format. If acceptable, the City will score the proposals.
  - i. Selection Criteria:
    - 1. Evaluations of the consultant's proposal will be based on the quantitative and qualitative responses to the questions and supplemental information supplied in the proposal. (Max. score 100 points)
      - a. **Overall Price** (Max. 20 points)
      - b. **Technical Expertise** (Max 15 points)
      - c. **Project Approach and Schedule** (Max 20 points)
      - d. **Qualifications, Past Performance, & Relative Experience of the Project Team** (Max. 15 points)
      - e. **Proposal Presentation & Presentation Style** (Max 15 points)
      - f. **Overall Rating** (Max. 15 points)
    - 2. Firms that demonstrate their ability to provide the greatest project value at or below the project budget will be scored favorably. The allowance for the playground equipment and installation is up to \$500,000. The City reserves the right to award the contract in part or whole, to consider the option of selecting one or no Proposals, and to award the contract to Bidder whose Proposal is, at the City's discretion, best suited to the City's needs.

**VI. TERMS AND CONDITIONS**

- a. The terms and conditions set forth in the Design Build Contract attached as exhibit A and the supplemental following terms and conditions will apply to this Request for Proposal, each Bidder's Proposal, and to the negotiations, if any, of any said Contract. Submission of a Proposal in response to this RFP indicates the Bidder's acceptance of the terms and conditions contained in this document and the Design Build Contract.
- b. Late Proposals: Any Proposals received after the Final Date and Time for Receipt of Proposals will not be accepted and will be returned to the Bidder, unopened, or discarded without being considered.

Submit RFP to the City at [rfp@northglenn.org](mailto:rfp@northglenn.org).

**City Clerks Office:**

Northglenn City Hall  
11701 Community Century Drive  
Northglenn, CO 80233

P: 303-451-8326

F: 303-450-8708

BidNet

(Rocky Mountain Bid System)

**Questions:**

**Mr. Jesse Mestrovic**

Parks & Recreation Project Manager  
11701 Community Center Drive | Northglenn, CO 80233

[jmestrovic@northglenn.org](mailto:jmestrovic@northglenn.org)

D 303-450-8838

C 720-512-7301

[www.northglenn.org](http://www.northglenn.org)



**EXHIBIT E – AMOUNT OF COMPENSATION**

Recreation Plus

(Vendor Name)

The proposal shall be a **Guaranteed Maximum Price** including a breakout of tasks. Hereby submits to the City of Northglenn, Colorado the following bid items, complete and in place, as specified for the:

**E.B. Rains Jr. Memorial Park Sensory Playground - RFP 2022-020**  
**Renovation Project**

Item	Description	Total Cost
A	Planning Services – concept plans & final plans	Included
B	Design Services – survey, construction drawings and specifications	Included
C	Play Equipment – play structures, equipment, site furniture, etc.	\$ 156,042.00
D	Safety Surfacing – Pour in Place (PIP) Rubber Safety Surfacing	\$ 303,119.00
E	Construction – mobilization/bonds/insurance, site prep and earthwork, equipment delivery and installation, and construction material and testing	\$ 240,800.00

Cost are to include all cost for material, markup, overhead and general expenses

TOTAL FOR ALL ITEMS \$ 699,961.00

TOTAL IN WORDS Six hundred ninety nine thousand nine hundred sixty one dollars

**EXHIBIT F**  
**INSURANCE REQUIREMENTS**  
to the  
**DESIGN-BUILD CONTRACT**  
Between  
**The City of Northglenn, Colorado**  
And  
**Recreation Plus**

The insurance required by Article A.11 shall be written for not less than the following limits of liability:

1. Worker's Compensation Insurance to cover obligations imposed by applicable law 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 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 the 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 Design-Builder'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.



The policies required by paragraph 2 and 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 Design-Builder.

No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations. The Design-Builder shall be solely responsible for any deductible losses under any policy required above.

**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 Design-Builder'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 Design-Builder'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 cancelled, 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  
Attn: Kathy Kvasnicka  
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.