

**Parks, Recreation and Cultural Services Department
Memorandum #3-2012**

DATE: February 9, 2012

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William Simmons, City Manager *WAS*
Amanda J. Peterson, Director for Parks, Recreation and Culture *ajp*

SUBJECT: CR-18 Recreation Center Gymnasium Floor Replacement

RECOMMENDATION

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

- 1) Authorize the Mayor to execute a contract between the City of Northglenn and Ponder Company, Inc. for the Recreation Center Gymnasium Floor Replacement in the amount not to exceed \$60,000.00, inclusive of contingency, as per the attached quote.
- 2) Acknowledge that this replacement is the result of water damage, and that all expenses above the \$25,000 deductible that are associated with this agreement will be reimbursed by CIRSA as a property insurance liability claim.

BACKGROUND

The Northglenn Recreation Center gymnasium floor was damaged on January 21, 2012 as a result of an accidental discharge of the fire sprinkler. The fire department responded immediately, and turned the water off, however, a significant amount of water had already discharged onto the floor. This water pooled in low spots, and seeped into the pad and underlayment of the floor. Staff and firefighters manually removed as much water as possible from the floor, but significant damage had already occurred.

The floor was evaluated by Ponder Company, Inc. and CIRSA representatives in the week following. Moisture levels were read on two occasions, these readings indicated that there was an average of 8-11% saturation, with some areas reading as high as 16%, in the top layers of the floor, and in excess of 25% saturation in the underlayment. Both Ponder Company and CIRSA agreed that the floor could not be reasonably repaired, and that replacement is necessary.

Ponder Company, Inc. installed the existing floor in August 2011. As such, CIRSA representatives have stated that it is desirable for Ponder Company, Inc. to perform the replacement. Ponder Company, Inc. has provided a quote for this project that indicates that approximately 70% of the flooring will need to be completely replaced, with the remaining 30% to be salvaged. As is indicated in the attached quote, CIRSA is aware that these numbers may change from "Pricing Scenario 1" to "Pricing Scenario 2" once the flooring is removed and can be fully evaluated, and have approved both the quote and the scope of work identified in the attached agreement. The exact scope of work will be monitored by City staff and CIRSA representatives, any costs in excess of "Pricing Scenario 1," but within the contingency amounts, will be approved by CIRSA prior to the completion of additional work.

CIRSA representatives and staff are currently investigating the strength, integrity and overall appropriateness of the existing sprinkler heads and cages. If any deficiencies are identified, these deficiencies will be corrected prior to the reopening of the gymnasium to decrease the future likelihood of an accidental discharge of the sprinkler system.

BUDGET/TIME IMPLICATIONS

The cost of the deductible for the Recreation Center Gym Floor Replacement is \$25,000.00. All invoices associated with the attached agreement will be paid by the City, and reimbursed by CIRSA. The deductible will be due to CIRSA at the completion of the project. Funding for the deductible amount of \$25,000.00 is available in the General Fund Judgment/Claims account.

The demolition and installation are scheduled to begin February 13, 2012 and will take approximately one month to complete.

STAFF REFERENCE

For additional information, please contact Amanda Peterson, Director of Parks, Recreation, & Cultural Services at apeterson@northglenn.org or by phone at (303) 450-8950.

PONDER COMPANY, INC.

1545 W. Tufts Ave. Unit B ♦ Englewood, Colorado 80110
303-761-1339 (phone) ♦ 303-761-1719 (fax)

To: Professional Claims Associates, Inc.
P.O. Box 3232
Englewood, CO 80155
Attn.: Ted Oldenburg
Re.: Northglenn Rec Center Gym Floor Water Damage

Date: February 1, 2012

Ted,

Thank you for your interest in Robbins Sports Surfaces, Ponder Company and the services we provide. Per our meeting in the gym yesterday, I am providing the following information for your use regarding the water damage to the maple gymnasium floor. As you noted, there are large areas of cupped flooring boards as well as several areas of buckled (humped) flooring. The damage is most prominent on the western end with a larger progression eastward on the northern half of the gym. I understand the water source was a damaged fire sprinkler head which ran for approximately 45 minutes. Please see my attached layout for the extent of the damaged flooring.

As we discussed, the normal moisture content range of maple flooring in our geographic area is 5-8%. Upon our inspection of the damaged area of floor, readings in the cupped areas averaged 8-11% in the maple and even higher (25%+) in the plywood subfloor. These readings give cause for concern in that, due to the fact that there may be a considerable amount of water under the surface of the floor, we may not be witnessing the extent of the damage yet.

As we discussed, the floor is an advanced floating panel system known as a Bio Cushion LP by Robbins Sports Surfaces. A Bio Cushion LP consists of a continuous layer of 7/16" Zero G shock pad, 2 layers of 1/2" CDX plywood, and 450 (1/2") x 2-1/4" XL PLUS maple flooring in average 6'6" lengths. Fortunately, the design of the floor and the properties of the Zero G shock pad prevented a complete migration of water under the floor. The Zero G shock pad effectively mitigated some of the scope of the damage.

The repair process involves removing the maple from the damaged areas, repairing the damaged areas of the subfloor (including new Zero G Shockpad & plywood), nailing the maple to the subfloor and then sanding and refinishing the entire floor for best results.

Due to the location of the damage (across the END of the gym) and quantity of damage (approximately 70%) of the gym, it will be most economical and will provide the most structurally sound end product if the maple is completely removed from the subfloor and replaced as a single, monolithic unit after the subfloor is restored. Extended lace-ins across a gym simply aren't feasible with 6'6" long boards which are overlapped an average of 3 feet in adjacent rows.

Per your direction, we are basing these figures on an area of complete replacement of 4,000 square feet in the 7,500 s.f. gym. As the original installer of the Bio Cushion LP system, we installed the floor in Sept 2011 for \$56,760.00, or \$7.57 / s.f. We can extend this same pricing for this restoration project despite a slight increase in material prices since the floor was installed.

Below please find a general scope of work and other information regarding this repair.

(continued)

Scope of Work: Materials, freight and labor to remove a portion of the gym floor and subfloor then sand & refinish the entire floor. Work to include: removing & haul off of the designated areas of water damaged flooring, installing new Zero G Shock pad in the damaged areas, replacing the 2 layers of ½ CDX plywood subfloor (staggering joints in adjacent rows to ensure structural integrity), machine nailing new 450 ½" XL x 2-1/4" 2nd & Better Robbins Continuous Strip XL P.L.U.S. MFMA maple in 6'6" average lengths, sanding the entire gym floor to a smooth finish, applying 2 coats of seal, applying gamelines for all courts as they currently exist, applying 2 coats of finish, and re-installing the vent cove base and aluminum saddles where removed.

Exclusions: taxes, bonds, repairs due to concealed damage (if repairs exceed or are under the quantities quoted above by more than 10% in area, please allow for adjustment of pricing), electrical hookup of sanders, removal of dust from adjacent surfaces, and protection of finished flooring.

General Unit Costs & Definitions:

- **Demo Complete:** Allow \$1.20 / s.f. Complete removal of all layers of the floor. We'll be happy to remove from the jobsite or can provide the removed floor directly to a 3rd party of your choosing. FOB jobsite.
- **Scrape Maple:** Allow \$0.50 / s.f. Removal of maple from the subfloor without the intent of reusing it as flooring. This cost also includes removal of all nails left in the plywood subfloor. The removed maple can be repurposed for numerous uses. Includes haul off or can be provided to a 3rd party of your choosing. FOB jobsite.
- **Hand Pull Maple for Reuse:** Allow \$1.00 / s.f. This option includes carefully removing the maple, board by board, de-nailing the maple and stacking it in the gym for reuse in the floor. Important Note: Despite our best efforts to minimize damage, please allow for a 25% - 30% loss factor when hand-pulling maple for reuse.
- **Cost of Bio Cushion LP:** As we discussed, it's difficult to accurately break down the cost of the system due to the fact that some of the subfloor components (Zero G & AquaBar B) as well as the maple come from one source (Robbins), share the same freight and are priced as a system by the manufacturer. That said, a general breakout of the floor system is as follows: \$2.03 Subfloor (including 2 layers plywood, Zero G shock pad, staples, glue, blocks, freight & labor) + \$4.27 Maple flooring (6'6" long maple, AquaBar B, spline, cleats, freight & labor) + \$1.30 Sand, Seal, Stripe & Finish (including sandpaper, seal, finish, 450 finish, tape, gameline enamels, freight & labor) = total \$7.57 / s.f. at 7,500 s.f.

Pricing Scenario #1 (All maple is new):

Demo complete 4,000 s.f. @ \$1.20	\$ 4,800.00
Scrape maple from remaining subfloor 3,500 s.f. @ \$0.50.....	\$ 1,750.00
New Bio Cushion LP incl. refinishing whole gym (Whole floor	
\$56,750 less credit for subfloor not removed (3,500 @\$2.03=\$7,105.00)..	<u>\$49,645.00</u>
Total	\$56,195.00

(continued)

Pricing Scenario #2 (3,500 s.f. maple is reclaimed from floor):

Demo complete 4,000 s.f. @ \$1.20.....	\$ 4,800.00
Hand Pull maple from remaining subfloor 3,500 s.f. @ \$1.00.....	\$ 3,500.00
Add'l maple to be purchased (25% of 3,500 s.f.) due to breakage during hand pulling 875 @ \$2.97/ s.f.....	\$ 2,600.00
New Bio Cushion LP 4,000 s.f. @ \$7.57	\$30,280.00
Rack & Nail reclaimed 3,500 s.f. (includes AquaBar B, cleats, spline, freight & labor @ \$1.30 / s.f.....	\$ 4,550.00
Sand, Seal, Stripe and finish 3,500 s.f. reclaimed maple @\$1.30/s.f.....	<u>\$ 4,550.00</u>
Total	<u>\$50,280.00</u>

Note: When using reclaimed maple, it is advised to have all parties carefully inspect the maple for damage prior to re-use. Nevertheless, it is still possible for reclaimed maple to have small blemishes or nicks resultant from the demo process.

Thank you for your consideration of this information. If you need any clarifications or if you would like to examine any other scenarios, just let me know and I'll be happy to help.

Sincerely,

via email

Pat Milligan
Ponder Company, Inc.

Cc: Brian Magnett, Northglenn Rec.

This quote is good for 15 days and is based on immediate shipment of materials to the jobsite

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-18
Series of 2012

Series of 2012

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND PONDER COMPANY, INC. FOR THE RECREATION CENTER GYMNASIUM FLOOR REPLACEMENT

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

Section 1. The Agreement between the City of Northglenn and Ponder Company, Inc., attached hereto, for a total amount not to exceed \$60,000.00 for the Recreation Center Gymnasium Floor Replacement is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

Section 2. The City Council further directs that in accordance with its property liability insurance policy, City staff is to obtain reimbursement for all expenses in excess of the City's \$25,000 deductible from the City's insurer.

DATED at Northglenn, Colorado, this ____ day of _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "City") and Ponder Company, Inc. (hereinafter referred to as "Contractor").

RECITALS:

A. The City requires professional services.

B. Contractor has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Contractor shall provide to the City, professional consulting services for the Project.

I. SCOPE OF SERVICES

Contractor shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project which are described or reasonably implied from **Exhibit A** which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Contractor with reports and such other data as may be available to the City and reasonably required by Contractor to perform hereunder. No project information shall be disclosed by Contractor to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Contractor shall be returned to the City. Contractor is authorized by the City to retain copies of such data and materials at Contractor's expense.

III. OWNERSHIP OF WORK PRODUCT

The City acknowledges that the Contractor's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of the City upon completion of the work.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Contractor, the City shall pay Contractor an amount not to exceed Sixty Thousand dollars (\$60,000). Payment shall be made in accordance with the schedule of charges in **Exhibit B** which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Contractor in performing all services hereunder.

B. Contractor may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Contractor under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Contractor's verified payment request, shall be submitted by Contractor to the City no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Contractor fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Contractor defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The City has the right to ask for clarification on any Contractor invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Contractor may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Contractor may terminate this Agreement. Upon receipt of payment in full for services rendered, Contractor will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Contractor's certification that services required herein by Contractor have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Within seven (7) days of receipt from the City of a Notice to Proceed, Contractor shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Contractor shall furnish the City the specified deliverables as provided in Exhibit A.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City. If Contractor proceeds without such written authorization, then Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. ILLEGAL ALIENS

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

B. Prohibited Acts. Contractor shall not:

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

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

C. Verification.

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

2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:

a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

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

E. If Contractor does not currently employ any employees, Contractor shall sign the NO Employee Affidavit attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

IX. INDEMNIFICATION

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

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

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

X. INSURANCE

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

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

1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Contract, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, 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 (\$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 not be 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. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

4. To the extent that liability results from the acts or omissions of the Contractor, the policy required by paragraph 2 above shall be endorsed to include the City and the City's officers, employees, and subcontractors as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its Contractors shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by

paragraph I shall contain any exclusion for bodily injury or property damage arising from completed operations. Contractor shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. If the City is named as an additional insured on any policy which does not allow for the automatic addition of additional insureds, the Contractor's insurance agent shall also provide a copy of all accompanying endorsements recognizing the City as an additional insured. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Northglenn
Attn: Brian Magnett
11701 Community Center Drive
Northglenn, Colorado 80233-8061

6. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

8. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 et seq., Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers, or its employees.

XI. NON-ASSIGNABILITY

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the City's providing Contractor with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Contractor for all

work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Contractor.

XIII. CONFLICT OF INTEREST

The Contractor shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

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

XV. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is the employee of the City for any purposes.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A and B is the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

XVIII. SUBJECT TO ANNUAL APPROPRIATION

Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations the City not to be performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal conflicting provisions in the Agreement establishing any monetary obligation beyond the current fiscal year.

XIX. NOTICE

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

The City: City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

Contractor: Ponder Company, Inc.
1545 W. Tufts Ave. Unit B
Englewood, CO 80110

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF NORTHGLENN, COLORADO

By: _____
William Simmons Date

City Manager
Title

ATTEST:

Johanna Small, CMC Date
City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann Date
City Attorney

CONTRACTOR:

By: Pat Milligan

Pat Milligan
Print Name

V.P. 2/2/12
Title Date

City's Contract # _____

Name of City's Project Manager
Brian Magnett

ATTEST:

By: [Signature]

MARCO PEREZ, JR
Print Name

V.P. 2/2/12
Title Date

Exhibit A

The repair process involves removing the maple from the damaged areas, repairing the damaged areas of the subfloor (including new Zero G Shockpad & plywood), nailing the maple to the subfloor and then sanding and refinishing the entire floor for best results.

Due to the location of the damage (across the END of the gym) and quantity of damage (approximately 70%) of the gym, it will be most economical and will provide the most structurally sound end product if the maple is completely removed from the subfloor and replaced as a single, monolithic unit after the subfloor is restored. Extended lace-ins across a gym simply are not feasible with 6'6" long boards which are overlapped an average of 3 feet in adjacent rows.

The figures below are based on an area of complete replacement of 4,000 square feet in the 7,500 s.f. gym. As the original installer of the Bio Cushion LP system, we installed the floor in Sept 2011 for \$56,760.00, or \$7.57 / s.f.

Scope of Work: Materials, freight and labor to remove a portion of the gym floor and subfloor then sand & refinish the entire floor. Work to include: removing & haul off of the designated areas of water damaged flooring, installing new Zero G Shock pad in the damaged areas, replacing the 2 layers of ½ CDX plywood subfloor (staggering joints in adjacent rows to ensure structural integrity), machine nailing new 450 ½" XL x 2-1/4" 2nd & Better Robbins Continuous Strip XL P.L.U.S. MFMA maple in 6'6" average lengths, sanding the entire gym floor to a smooth finish, applying 2 coats of seal, applying gamelines for all courts as they currently exist, applying 2 coats of finish, and re-installing the vent cove base and aluminum saddles where removed.

Exclusions: taxes, bonds, repairs due to concealed damage (if repairs exceed or are under the quantities quoted above by more than 10% in area, please allow for adjustment of pricing), electrical hookup of sanders, removal of dust from adjacent surfaces, and protection of finished flooring.

General Unit Costs & Definitions:

- **Demo Complete:** Allow \$1.20 / s.f. Complete removal of all layers of the floor. We'll be happy to remove from the jobsite or can provide the removed floor directly to a 3rd party of your choosing. FOB jobsite.
- **Scrape Maple:** Allow \$0.50 / s.f. Removal of maple from the subfloor without the intent of reusing it as flooring. This cost also includes removal of all nails left in the plywood subfloor. The removed maple can be repurposed for numerous uses. Includes haul off or can be provided to a 3rd party of your choosing. FOB jobsite.
- **Hand Pull Maple for Reuse:** Allow \$1.00 / s.f. This option includes carefully removing the maple, board by board, de-nailing the maple and stacking it in the gym for reuse in the floor. Important Note: Despite our best efforts to minimize damage, please allow for a 25% - 30% loss factor when hand-pulling maple for reuse.
- **Cost of Bio Cushion LP:** As we discussed, it's difficult to accurately break down the cost of the system due to the fact that some of the subfloor components (Zero G & AquaBar B) as well as the maple come from one source (Robbins), share the same freight and are priced as a system by the manufacturer. That said, a general breakout of the floor system is as follows: **\$2.03 Subfloor** (including 2 layers plywood, Zero G shock pad, staples, glue, blocks, freight & labor) + **\$4.27 Maple flooring** (6'6" long maple, AquaBar B, spline, cleats, freight & labor) + **\$1.30 Sand, Seal, Stripe & Finish** (including

sandpaper, seal, finish, 450 finish, tape, gameline enamels, freight & labor) = total \$7.57
/s.f. at 7,500 s.f.

Note: When using reclaimed maple, it is advised to have all parties carefully inspect the maple for damage prior to re-use. Nevertheless, it is still possible for reclaimed maple to have small blemishes or nicks resultant from the demo process.

Exhibit B

Pricing Scenario #1 (All maple is new):

Demo complete 4,000 s.f. @ \$1.20	\$ 4,800.00
Scrape maple from remaining subfloor 3,500 s.f. @ \$0.50.....	\$ 1,750.00
New Bio Cushion LP incl. refinishing whole gym (Whole floor \$56,750 less credit for subfloor not removed (3,500 @\$2.03=\$7,105.00)..	<u>\$49,645.00</u>
Total	\$56,195.00

Pricing Scenario #2 (3,500 s.f. maple is reclaimed from floor):

Demo complete 4,000 s.f. @ \$1.20.....	\$ 4,800.00
Hand Pull maple from remaining subfloor 3,500 s.f. @ \$1.00.....	\$ 3,500.00
Add'l maple to be purchased (25% of 3,500 s.f.) due to breakage during hand pulling 875 @ \$2.97/ s.f.....	\$ 2,600.00
New Bio Cushion LP 4,000 s.f. @ \$7.57	\$30,280.00
Rack & Nail reclaimed 3,500 s.f. (includes AquaBar B, cleats, spline, freight & labor @ \$1.30 / s.f.....	\$ 4,550.00
Sand, Seal, Stripe and finish 3,500 s.f. reclaimed maple @\$1.30/s.f.....	<u>\$ 4,550.00</u>
Total	\$50,280.00

This quote is good for 15 days and is based on immediate shipment of materials to the jobsite