

**North Front Range Transportation &
Air Quality Planning Council**

**DBA North Front Range Metropolitan Planning Organization
(NFRMPO)**

**Request for Proposals
For
RideNoCo Trip Discovery Tool**

September 2021



North Front Range
**Metropolitan
Planning
Organization**

RFP NO. M2021-001

Proposals Due October 15, 2021

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REQUEST FOR PROPOSALS
#M2021-001 NORTH FRONT RANGE TRIP DISCOVERY TOOL
PROPOSALS DUE: 3:00 PM Mountain Daylight Time (MDT)
Friday, October 15, 2021

SECTION A: REQUEST FOR PROPOSALS

The North Front Range Metropolitan Planning Organization (NFRMPO) requests proposals for the services of a qualified Consultant to develop a Trip Discovery Tool in accordance with the scope of services provided within this Request for Proposals (RFP).

The NFRMPO posts current bid and proposal opportunities on the Rocky Mountain E-Purchasing System (RMEPS) website. We encourage Consultants and contractors to take advantage of free registration with RMEPS to see all available opportunities. If you need help registering, please call the Rocky Mountain E-Purchasing Group Support Department toll free (800) 835-4603.

Link to North Front Range Metropolitan Planning Organization Open Solicitations:

[Rocky Mountain E-Purchasing Group
www.BidNetDirect.com/colorado](http://www.BidNetDirect.com/colorado)

A copy of the RFP may also be downloaded from the NFRMPO website: <http://nfrmpo.org/rfps-rfqs>.

All proposals must be received before 3:00 PM MDT Friday, October 15, 2021 as directed in the RFP instructions.

All proposals should be emailed to Kerri Ishmael at kishmael@nfrmpo.org or through the RMEPS website prior to the deadline as a single PDF document.

The NFRMPO is covered under the Colorado Department of Transportation (CDOT) Disadvantaged Business Enterprise (DBE) program. CDOT has an overall DBE goal of 2.5 percent for FTA-funded projects and 11.55 percent for FHWA-funded projects. There is no specific contract goal for this project, but the NFRMPO encourages all disadvantaged business enterprises to submit a response to all invitations.

The NFRMPO does not discriminate against anyone or firm on the grounds of race, color, national origin, or other protected status.

Questions concerning the proposal submittal or process should be directed, in writing via email, to Cory Schmitt at cschmitt@nfrmpo.org.

No questions will be accepted after **October 8, 2021**. Answers to questions received will be posted on Rocky Mountain E-Purchasing System (RMEPS) and <http://nfrmpo.org/rfps-rfqs/> and sent out via email to any Consultant who indicates an intention to participate in the RFP and provides a valid email address no later than October 14, 2021.

SECTION B: INSTRUCTIONS FOR PROPOSAL SUBMISSION

All proposals must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Proposals may be withdrawn up to the date and hour set for closing. Once proposals have been accepted by the NFRMPO and closing has occurred, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the NFRMPO approved Consultants list for a period of 24 months from the date of the opening. The NFRMPO may also pursue any remedies available at law or in equity. Proposal prices must be held firm for a period of sixty (60) days after proposal openings.

Submission of a proposal is deemed as acceptance of all terms, conditions and specifications contained in the NFRMPO's specifications initially provided to the Consultant. Any proposed modification must be accepted in writing by the NFRMPO prior to proposal close date.

Only proposals properly received by the NFRMPO will be accepted. All proposals should be clearly identified by the proposal number and proposal name contained in the RFP.

Proprietary information needs to be identified as such and placed in a separate section of the response.

No proposal will be accepted from, or any purchase order awarded, to any person, firm, or corporation in default on any obligation to the NFRMPO.

No proposal will be accepted from or any purchase order awarded, to any person, firm or corporation who has been debarred from doing business with the federal government.

The NFRMPO is tax exempt. Proposals must be furnished exclusive of any federal excise tax, wherever applicable.

Consultants must be properly licensed and secure necessary permits, wherever applicable.

The NFRMPO may elect, where applicable, to award proposals on an individual item/group basis or on a total proposal basis, whichever is most beneficial to the NFRMPO. The NFRMPO reserves the right to accept or reject any and all proposals, and to waive any irregularities or informalities.

Sales prohibited/conflict of interest: no officer, employee, or member of the NFRMPO Council shall have a financial interest in the sale to the NFRMPO of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the NFRMPO. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback, or any items of monetary value from any person who has done or is seeking to do business with any NFRMPO employee or NFRMPO Council member is prohibited.

Collusive or sham proposals: Any proposal deemed to be collusive or a sham proposal will be rejected and reported to authorities as such. Your authorized signature on this quote assures that such proposal is genuine and is not a collusive or sham proposal.

SECTION C: OVERVIEW

The NFRMPO Planning Council, comprised of 15 member governments, has set aside funding to implement a One Call/One Click Center, branded as RideNoCo, in Larimer and Weld counties in Northern Colorado. One of the components of RideNoCo is a trip discovery tool to make it easier for older adults, individuals with disabilities, and the broader community to identify available transportation options and plan trips.

Background

Over the past several years, there has been completed studies and programs that have set the framework for a One Call/One Click Center that focuses on the needs of older adults and individuals with disabilities in Larimer and Weld Counties while also providing service to the broader community. The Phase 2 Trip Discovery Tool builds upon the Phase 1 Website completed by another Consultant. The fully implemented One Call/One Click Center, as described in the [Larimer County Senior Transportation Implementation Plan](#), will empower individuals in Northern Colorado, especially vulnerable groups such as older adults and individuals with disabilities, with information about and access to transportation options to improve their mobility and thus support an enhanced quality of life.

Purpose & Desired Outcomes

This RFP is seeking a Consultant to develop the RideNoCo Trip Discovery Tool, hereafter called the Trip Discovery Tool, as described in **Tasks** within **Section E: Scope of Work**.

The purpose of the Trip Discovery Tool is to make it easier for individuals in Larimer and Weld counties to identify available transportation options and plan trips through the RideNoCo website with a custom trip planning tool featuring available public transit and human services transportation providers.

The Consultant will develop a trip discovery tool that will incorporate existing General Transit Feed Specification (GTFS) databases from the region's 3 major fixed-route public transit agencies and CDOT's Bustang service, develop GTFS-Flex databases for four (4) human service transportation providers, and integrate these databases in a custom trip discovery tool utilizing the open-source OpenTripPlanner to be embedded into the RideNoCo website.

The desired outcomes of the Trip Discovery Tool project are:

- A user-friendly custom trip planning tool that matches the design and brand aesthetics of the RideNoCo program, allows users to identify transportation options, and plan trips across a variety of public transit, human service transportation providers, and active transportation modes (walking/biking) on desktop and mobile devices.
- A tool capable of being periodically updated by NFRMPO staff to ensure accuracy of transportation information.
- A scalable tool to accommodate new or changing ride providers.
- A tool that can provide metadata on metrics such as usage and common destinations, if possible.

The baseline inputs of the Trip Discovery Tool should include:

- Origin Address/Point
- Destination Address/Point
- Date/Time of Desired Trip
- Desired transportation mode:
 - Walking
 - Biking
 - Public Transit

- Human Service Transportation Provider
- All/Any Combination of Modes

SECTION D: NATURE OF SERVICES REQUIRED

Purpose

The purpose of this RFP is to select a Consultant to develop and write the Trip Discovery Tool.

Schedule

- September 1, 2021: Release of RFP
- October 8, 2021: Consultant questions due by 3:00PM MDT
- October 15, 2021: Proposals due by 3:00 PM MDT
- Week of October 25, 2021: Consultant Selection Committee meets & Interviews if necessary
- November 2021: Firm Selected, and contract executed

Cost Liability

All costs incurred in the submission of proposals or in making necessary studies, designs, or benchmarks of estimates for the preparation of the proposals are the sole responsibility of the Consultant.

Scope of Work

The Consultant, at a minimum, must satisfactorily achieve the deliverables in this Section, consistent with NFRMPO Council standards or performance standards. The Consultant may also propose to achieve additional deliverables beyond those minimally required.

The Consultant is expected to provide technical expertise, oversight, and perform the primary work on the Trip Discovery Tool, with the NFRMPO staff providing support and guidance.

The Consultant's work tasks are anticipated to include the following items, detailed on the following pages:

- **TASK 1: Project Management & Administration**
- **TASK 2: GTFS-Flex Database Creation**
- **TASK 3: GTFS Database Compilation**
- **TASK 4: Trip Discovery Tool Creation**
- **TASK 5: Trip Discovery Tool Integration**
- **TASK 6: Ongoing Maintenance**

SECTION E: SCOPE OF WORK

Task 1: Project Management & Administration

Purpose: The NFRMPO Project Manager and Consultant will maintain consistent communication to discuss questions, issues, or concerns as they arise. The NFRMPO Project Manager and Consultant will make use of a completed and approved work plan as the basis for communication. Additionally, Consultant should develop and submit monthly reimbursement requests to ensure the budget is being spent properly and on-schedule.

Tasks

- 1.1 Develop a detailed work plan outlining key steps, processes, and milestones necessary to complete the agreed-upon Scope of Work, including a schedule of task delivery
- 1.2 Maintain contact with NFRMPO Project Manager throughout project, including regular check-ins and updates
- 1.3 Meet with a stakeholder group of project agencies to review product up to approximately three (3) times throughout the project cycle
- 1.4 Submit reimbursements monthly to NFRMPO Accounting Team

Deliverables

- 1.1 Work Plan including Schedule of and Scope of Work for Deliverables
- 1.2 Periodic check-ins with the Project Manager
- 1.3 Facilitate meetings with Stakeholder group showcasing project progress for feedback and accuracy
- 1.4 Completed and on-time reimbursement requests submitted to the NFRMPO Accounting Team

Task 2: GTFS-Flex Database Creation

Purpose: The Consultant will develop GTFS-Flex Databases for four (4) human service transportation providers that provide volunteer demand-response service in Larimer and Weld counties.

Tasks

- 2.1 Develop GTFS-Flex Databases for identified human service transportation providers
- 2.2 Review databases with the providers and project manager for approval

Deliverables

- 2.1 Approved GTFS-Flex Databases for identified human service transportation providers

Task 3: GTFS Database Compilation

Purpose: The Consultant will compile existing GTFS and GTFS-Flex databases from Transfort, City of Loveland Transit (COLT), Greeley Evans Transit (GET), and Bustang for incorporation into the Trip Discovery Tool.

Tasks

- 3.1 Identify and review existing GTFS and GTFS-Flex Databases from current public transit agencies in the region
- 3.2 Compile existing GTFS and GTFS-Flex Databases for purpose of building Trip Discovery Tool in Task 4

Deliverables

- 3.1 Compiled GTFS and GTFS-Flex Databases in preparation of creating Trip Discovery Tool in Task 4

Task 4: Trip Discovery Tool Creation

Purpose: Creation of a Trip Discovery tool utilizing OpenTripPlanner that contains Consultant-developed GTFS-Flex Databases and already existing GTFS databases from Transfort, City of Loveland Transit (COLT), Greeley Evans Transit (GET), and Bustang.

Tasks

- 4.1 Develop custom Trip Discovery tool utilizing OpenTripPlanner that incorporates Consultant developed and existing GTFS and GTFS-Flex Databases
- 4.2 Consult with developer of RideNoCo website to ensure visual appearance of trip planning tool aligns with RideNoCo brand aesthetics

Deliverables

- 4.1 Completed custom Trip Discovery tool

Task 5: Trip Discovery Tool Integration

Purpose: The code of the completed Trip Discovery Tool will be provided to the developer of the RideNoCo website to be embedded into the website.

Tasks

- 5.1 Provide code and instructions of Trip Discovery Tool to RideNoCo website developer
- 5.2 Coordinate with the RideNoCo website developer to ensure successful integration

Deliverables

- 5.1 Completed Trip Discovery Tool code provided to RideNoCo website developer

Task 6: Ongoing Maintenance

Purpose: The project team will train NFRMPO staff on how to update the GTFS databases and OpenTripPlanner code to ensure tool is accurate and up to date, as well as present a conceptual schedule and budget for maintenance beyond what NFRMPO staff are able to complete.

Tasks

- 6.1 Document industry-best practice standard for updating the Trip Discovery Tool to ensure transportation information is up to date
- 6.2 Create training guide and schedule to teach NFRMPO staff how to provide maintenance and updates to the Trip Discovery Tool
- 6.3 Train NFRMPO staff on how to provide maintenance and updates to the Trip Discovery Tool
- 6.4 Create a conceptual maintenance schedule and budget for future maintenance needs beyond what NFRMPO staff can complete

Deliverables

6.1 Trip Discovery Tool Training Guide maintenance schedule, scope, and budget

6.2 Conceptual maintenance schedule and budget for Trip Discovery Tool

Additional Items

EXPERTISE

The selected Consultant is expected to have expertise in:

- Project management
- GTFS-Flex Database creation
- OpenTripPlanner
- Needs of older adults and individuals with disabilities

SCHEDULE

The project will be completed within 12 months of contract being executed.

SECTION F: PRICING

BUDGET

The budget for this project is to be proposed by the Consultant with a detailed breakdown of project components and respective costs.

MEETINGS

The Consultant and the NFRMPO's Project Manager will work as a team and must be available for meetings or phone calls. The budget for travel is expected to be limited, so other communication options such as GoToMeeting and Microsoft Teams should be considered when in-person meetings would not be necessary or possible. These options might involve interactive, web-based meetings that display graphic or tabular materials in addition to voice communications.

TRAVEL

The NFRMPO office is located in Fort Collins, CO and any anticipated travel expenses for the Consultant team members must be included in the submitted cost proposals. Travel expenses for the Consultant team are not authorized to be reimbursed by the NFRMPO for trips that occur prior to the Notice to Proceed with the contract.

PRICING

All submitting consultants should submit a breakdown of their proposal in the following manner:

- Hourly fee per employee for each proposed task
- Estimated travel hours and associated cost
- Estimated hours dedicated to each task
- Other expected or proposed fees or costs.

Acknowledgement of overage, emergency, and day/night/weekend charges should be described accurately in the submittal.

The preceding items should be summed in a table for ease of review and include expected annual rate increases, if applicable.

SECTION G: SUBMITTALS

The purpose of the Proposal is to demonstrate the qualifications, competence, and capacity of the consultants seeking to develop the Trip Discovery Tool to the NFRMPO. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Proposal should demonstrate the qualifications of the Consultants.

The Technical Proposal should address all the points outlined in the RFP. The Proposal should be prepared simply and economically, providing a straightforward, concise description of the Consultant's capabilities to satisfy the requirements of the RFP.

Proposals **must** include the following documents and be submitted in digital form:

- Pricing Table as request in SECTION F: PRICING
- Completed SECTION J: Consultant's Signature. Proposals must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement.
- Completed W-9
- Lobbying Certification – Appendix A
- Debarment and Suspension Certification – Appendix B

SECTION H: PROPOSAL EVALUATION AND AWARD

Evaluation and Assessment of Award

A Consultant Selection Committee, consisting of NFRMPO staff and representatives from local transportation providers, will review all proposals received and score them based on the criteria in **Table 1**. The Committee will then select the firm it considers to be the most qualified and responsive to undertake the project. Proposals receiving a score of 40 (out of a possible 75 prior to interviews) or lower during Phase I may not be considered by the Committee for an interview. If none of the proposals meet the 40-point threshold, the Committee reserves the right to interview the consulting firm with the highest point total or not award the contract and re-advertise the RFP.

Criteria A through E represent Phase I in Consultant selection. Each member of the Committee will evaluate these criteria individually. The scores will be submitted to the Project Manager prior to the decision of whether interviews are required. An average of the Committee's scores will be used to calculate the points for each criterion. The Committee may request interviews with as many as three of the highest scoring Consultants; award based on Phase I scores or terminate the process and not continue to Phase II in Consultant selection. If interviews are held, ranking will take place following the interviews. Each committee member will award points for a Consultant's interview following all interviews.

All proposals are rated according to the following criteria on a scale of 1 to 5 with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating. A weighted factor is applied based on importance decided by the Project Manager. The rating multiplied by the weighted factor gives the total available points.

Table 1: Scoring Criteria and Total Points

Phase	Criteria	Weighted Factor	Total Points
Phase I	A. Did the proposal demonstrate an understanding of the problem?	4	20
	B. Is the firm's proposed project budget and fee structure competitive, reasonable, and advantageous to the NFRMPO?	4	20
	C. Does the consultant have direct and the correct experience to meet the requirements of this RFP?	3	15
	D. Does the consultant's proposal provide a comprehensive approach to completing the project? Does the consultant's approach provide evidence to how the respondent will best meet the needs of the project?	2	10
	E. Does the consultant have the availability and commitment of staff members and resources to complete the tasks set out in the Scope of Work?	2	10
Phase 1 Possible Points		-	75
Phase II	F. Interview (if held)	5	25
Total Possible Points		-	100

Interviews

After proposals are evaluated, the selection committee will develop a list of up to three consultants to be virtually interviewed based on the total point evaluation. Interviews will give the Selection Committee the opportunity to have any questions they may have on the proposal answered. During the interviews, the Selection Committee will assign points to the various technical and cost criteria described above. The NFRMPO reserves the right to hire a Consultant without holding interviews. If it is determined that interviews will be required before a final decision can be made, the interviews will take place virtually using Microsoft Teams. Proposers should be willing and able to attend these interviews, if necessary. Firm(s) who are invited to an interview will be notified **the week of October 25, 2021** that an interview has been scheduled. At a minimum, the Consultant's project manager and key staff should attend.

If interviews are conducted, the proposers are expected to prepare detailed presentations on the scope of work, their expertise, and any relevant prior projects they propose.

SECTION I: PROTEST PROCEDURES

1.0 – Filing of Protest

1.1- When to File: Protest must be submitted in writing via e-mail to the Executive Director at smallette@nfrmpo.org within seven (7) working days after the aggrieved person knows or should have known of the facts giving rise thereto.

Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to the closing date for receipt of initial proposals, must be filed no later than three (3) working days prior to closing date for receipt of proposals.

1.2- Subject of Protest: Protestors may file a protest on any phase of solicitation or award, including but not limited to specification or award.

1.3-Form: The protest must be in writing and include, as a minimum, the following:

- (a) The name and address of the protestor.
- (b) Appropriate identification of the procurement by RFP number.
- (c) A statement of the reasons for the protest.
- (d) Any available exhibits, evidence or documents substantiating the protest.

2.0 – Decision

The Executive Director or his/her designee will decide and inform in writing on a protest within seven (7) working days after receiving all relevant, requested information. The decision of the Executive Director or his/her designee is final.

3.0 – Withholding of Award

When a protest has been filed before award, the North Front Range Transportation & Air Quality Planning Council will not make an award prior to the resolution of the protest, and when a protest has been filed before the closing date for receipt of proposals, the North Front Range Transportation & Air Quality Planning Council will not open proposals prior to the resolution of the protest, unless the North Front Range Transportation & Air Quality Planning Council determines that:

- (a) The items to be procured are urgently required.
- (b) Delivery or performance will be unduly delayed by failure to make the award promptly.
- (c) Failure to make prompt award will otherwise cause undue harm to the North Front Range Transportation & Air Quality Planning Council.

SECTION J: CONSULTANT'S SIGNATURE PAGE

By signature below, the Consultant certifies that the specifications and general provisions have been carefully examined. If the proposal is accepted, Consultant agrees to furnish the goods in the manner and time herein prescribed and according to all the requirements set forth.

Complete, sign and return the attached proposal documentation:

- Cover/Title Page
- Technical Proposal
- Pricing Table
- Section J: Consultant's Signature Page
- Completed W-9
- Completed Lobbying Certification – Appendix A
- Completed Debarment and Suspension Certification – Appendix B

Consultant will be expected to sign a contract similar to the sample contract located in Appendix C and will be subject to and must abide by the federal requirements/clauses included in the contract

The Consultant may withdraw a proposal at any time prior to the solicitation opening by providing written request via email to the Executive Director or designee. However, all proposals shall be irrevocable for sixty (60) calendar days from the day of the solicitation opening.

The Consultant agrees and warrants that the undersigned certifies that neither he/she nor anyone associated with Consultant's company listed below has directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive competition in connection with the procurement.

NAME/TITLE _____

SIGNATURE _____

FEDERAL TAX ID: _____

NAME OF FIRM: _____

ADDRESS: _____

EMAIL: _____

PHONE: _____ **FAX:** _____

FAILURE TO SIGN AND SUBMIT THIS FORM SHALL BE CAUSE FOR PROPOSAL REJECTION

APPENDIX A: CERTIFICATION REGARDING LOBBYING

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date: _____

APPENDIX B: DEBARMENT AND SUSPENSION CERTIFICATION

Choose one alternative:

The Proposer, _____, certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlements, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

OR

The Proposer is unable to certify to all of the statements in this certification and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of Title 31 USC § Sections 3801 are applicable thereto.

Executed in (City) _____, state of _____

Printed Name: _____

Authorized Signature

Date

APPENDIX C: SAMPLE CONTRACT

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between THE NORTH FRONT RANGE TRANSPORTATION AND AIR QUALITY PLANNING COUNCIL (the "MPO"), and _____ an independent consultant with a principal place of business at _____ ("Consultant") (collectively the "Parties").

WHEREAS, the MPO requires professional services; and

WHEREAS, Consultant has held itself out to the MPO as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF SERVICES

A. Consultant shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in the attached **Exhibit A**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the MPO is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. COMMENCEMENT AND COMPLETION OF WORK

Consultant shall commence work as set forth in the Scope of Service. Except as may be changed in writing by the MPO, the Scope of Services shall be complete and Consultant shall furnish the MPO the specified deliverables and project timeline as provided in **Exhibit A**.

III. COMPENSATION

A. In consideration for the completion of the Scope of Services by Consultant, the MPO shall pay Consultant an amount not to exceed _____. This maximum amount shall include all fees, costs and expenses incurred by Consultant, and no additional amounts shall be paid by the MPO for such fees, costs and expenses. The compensation paid under this Agreement is based on the Cost Proposal attached hereto as **Exhibit B**.

B. Notwithstanding the maximum amount specified in Paragraph A hereof, Consultant shall be paid only for work performed. If Consultant completes the Scope of Services for a lesser amount than the maximum amount, Consultant shall be paid the lesser amount, not the maximum amount.

C. Consultant shall submit invoices to the MPO on a monthly basis for all services rendered during the month represented on the invoice. Such invoices shall detail, with appropriate documentation, the task performed, the individuals working on such task, and expenses incurred with supporting documentation. Each invoice will contain all hours and expenses from the Consultant for the month. Upon receipt of an invoice, the MPO shall pay all undisputed amounts within thirty (30) days.

IV. PROFESSIONAL RESPONSIBILITY

A. Consultant 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 Consultant 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. The work and services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The MPO's review, approval or acceptance of, or payment for any services shall not 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.

D. Because the MPO has hired Consultant for its professional expertise, Consultant agrees not to employ subcontractors to perform any of the work required under the Scope of Services without the prior written consent of the MPO.

E. Commencing at the end of the calendar month following the date of execution of this Agreement and every calendar month end thereafter, Consultant shall provide the MPO with a written report of the status of the work. Failure to provide any required monthly report may, at the option of the MPO, suspend the processing of any partial payment request.

V. OWNERSHIP

The materials, items, and work specified in the Scope of Services, together with any and all related documentation and materials provided or developed by Consultant shall be exclusively owned by the MPO. Consultant expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, it shall not constitute a "work made for hire," Consultant hereby transfers, sells, and assigns to the MPO all of its right, title, and interest in such work. Other entities that may reproduce, publish, or otherwise use the designs, plans, reports, specifications, drawings, and other services rendered by the Consultant include but are not limited to the Colorado Department of Transportation ("CDOT"), the Federal Transportation Administration ("FTA"), and the Federal Highway Administration ("FHWA").

VI INDEPENDENT CONTRACTOR

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

VII. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

B. Consultant shall procure and maintain, and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the MPO. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.

2. Commercial general liability insurance with minimum combined single limits of two million dollars (\$2,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision and shall be endorsed to include the MPO and the MPO's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of two million dollars (\$2,000,000) each claim and two million dollars (\$2,000,000) general aggregate.

C. Any insurance carried by the MPO, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

D. Consultant shall provide to the MPO a certificate of insurance, completed by Consultant's insurance agent, as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. 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 MPO. The MPO reserves the right to request and receive a non-certified copy of any policy and any endorsement thereto with sensitive information redacted by Consultant..

E. Failure on the part of Consultant to procure or maintain the insurance required herein shall constitute a material breach of this Agreement upon which the MPO may immediately terminate this Agreement, or at its discretion, the MPO 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 MPO shall be repaid by Consultant to the MPO upon demand, or the MPO may offset the cost of the premiums against any monies due to Consultant from the MPO.

VIII. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the MPO and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, 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 arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the negligent act, omission, or error of Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any subcontractor of Consultant. Consultant's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant or of any subcontractor of Consultant. If Consultant is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Consultant's obligation to indemnify and hold harmless the MPO may be determined only after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. TERMINATION

A. This Agreement shall terminate when all the work described in the Scope of Services is completed to the MPO's satisfaction, or upon the MPO's providing Consultant with seven (7) days advance written notice, whichever occurs first. Upon receipt of the notice, Consultant shall immediately discontinue all work, except as permitted by the MPO in writing and deliver to MPO all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the Agreement is terminated by the MPO's issuance of written notice, the MPO shall pay Consultant for all work authorized and completed prior to the date of termination.

B. If Consultant defaults or fails or neglects to carry out the Agreement, or any part thereof, or fails to perform any provision of this Agreement after notice of default and an opportunity to cure, the MPO, after seven (7) days written notice to Consultant and without prejudice to any other remedy the MPO may have, may make good such deficiencies and may deduct the cost thereof, including compensation for any additional services made necessary thereby, from the payment then or thereafter due the Consultant. Or, at the MPO's option after said notice, the MPO may terminate this Agreement and may finish the project by whatever method the MPO deems expedient, and if the unpaid balance of the compensation exceeds the expense of finishing the project, such excess shall be paid to the Consultant, but if such expense exceeds such unpaid balance, the Consultant shall upon demand pay the difference to the MPO.

X. WORKERS WITHOUT AUTHORIZATION

A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with worker without authorization who will perform work under the Agreement and that Consultant 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. Consultant shall not:

(1) Knowingly employ or contract with a worker without authorization to perform work under this Contract; or

(2) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Contract.

C. Verification.

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

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

(3) If Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization who is performing work under the Agreement, Consultant shall:

1. Notify the subcontractor and the MPO within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under the Agreement; and

2. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection (1) hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under the Agreement; except that Consultant 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 a worker without authorization who is performing work under the Agreement.

D. Duty to Comply with Investigations. Consultant 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 Consultant is complying with the terms of this Contract.

E. If Consultant does not have employees, Consultant shall sign the “No Employee Affidavit” attached hereto.

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

XI. FEDERAL PROVISIONS

A. Equal Employment Opportunity compliance.

1. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action includes but is not limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. Consultant shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultant's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Consultant shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. Consultant shall include the provisions of this Section XI(A) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, in order that each of the foregoing provisions shall be binding upon each subcontractor or vendor. Consultant shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

B. **Clean Air Act and Clean Water Act compliance.** Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

C. **Energy Efficiency Standards compliance.** If applicable, Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.

D. **Debarment / Suspension compliance.** By execution of this Agreement, Consultant represents that it is not a party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). Consultant further represents it is not otherwise excluded or declared ineligible for award of federal funds under any other statutory or regulatory authority.

E. **Byrd Anti-Lobbying Amendment compliance.** If this Agreement includes compensation of \$100,000 or more, Consultant shall file the certification required for compliance with the Byrd Anti-Lobbying Amendment, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Consultant shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

F. **Procurement of recovered materials.** Consultant must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery;

and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

G. **Right to inventions made under the Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and involves Consultant's performance of experimental, developmental, or research work, the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations apply.

H. **Breaches and Disputes**

(1) *Disputes* – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the NFRMPO’s Executive Director. This decision shall be final and conclusive unless within then (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transportation Planning Director. In connection with any such appeal, the Contractor shall be afforded and opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision

(2) *Performance During Dispute* – Unless otherwise directed by the NFRMPO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(3) *Claims for Damages* – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

(4) *Remedies* – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the NFRMPO and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or if a court of competent jurisdiction with the State in which the NFRMPO is located.

(5) *Right and Remedies* – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of and duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the NFRMPO or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, no shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

I. **FTA Compliance.** Special provisions or conditions relating to federal patent law and rights in data that are applicable to this Agreement are set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. (ONLY REQUIRED FOR RESEARCH PROJECTS WITH FTA FUNDING)

XII. MISCELLANEOUS

A. Governing Law and 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 either Weld or Larimer Counties, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the MPO shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Consultant and the MPO, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. 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.

I. Governmental Immunity. The MPO, 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 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 MPO and its officers or employees.

J. No Obligation by the Federal Government. The MPO and the Consultant acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Consultant, to any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

K. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the MPO not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the MPO hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

[Remainder intentionally left blank – signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

**NORTH FRONT RANGE TRANSPORTATION
PLANNING COUNCIL**

Executive Director

CONSULTANT

By: _____ -

NO EMPLOYEE AFFIDAVIT

[To be completed only if Consultant does not have any employees]

1. Check and complete one:

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

OR

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

2. Check one.

I am a United States citizen or legal permanent resident.

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

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

OR

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

Contractor must verify this statement through the Federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the MPO.

Consultant Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

***[To be completed if Consultant participates in the
Department of Labor Lawful Presence Verification Program]***

I, _____, as a public contractor under contract with The North Front Range Transportation and Air Quality Planning Council (the "MPO"), hereby affirm that:

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

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

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

Consultant Signature

Date

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B
COST PROPOSAL

EXHIBIT C
FTA PATENT CLAUSES

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data.

1. The term "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Exhibit has been added:

a. Except for its own internal use, the Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Consultant authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

b. In accordance with 49 C.F.R. 18.34 and 49 C.F.R. 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(1) and (2)(b)(2) below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Consultant using Federal assistance in whole or in part provided by FTA.

c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Consultant performing experimental, developmental, or research work required by this Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Consultant's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

d. Unless prohibited by state law, upon request by the Federal Government, the Consultant agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Consultant shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

e. Nothing contained herein shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

f. Data developed by the Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Exhibit has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Consultant identifies that data in writing at the time of delivery of the contract work.

g. Unless FTA determines otherwise, the Consultant agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the MPO and Consultant agree to take the necessary actions to provide, through FTA, those rights

in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The Consultant agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights.

1. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Consultant agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Consultant agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Consultant agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

APPENDIX D: FEDERALLY REQUIRED CONTRACT CLAUSES

- A. CIVIL RIGHTS REQUIREMENTS**
- B. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**
- C. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**
- D. LOBBYING**
- E. NO OBLIGATION BY THE FEDERAL GOVERNMENT**
- F. TERMINATION**
- G. BREACHES AND DISPUTE RESOLUTION**
- H. GOVERNING LAW**
- I. SEVERABILITY**

A. Civil Rights Requirements

Civil Rights – The following requirements apply to the underlying contract:

- (1) **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - a) **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b) **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c) **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

B. Disadvantaged Business Enterprise (DBE)

- (1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%. A separate contract goal has not been established for this procurement.
- (2) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NFRMPO deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). The successful Consultant/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- (3) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the NFRMPO.
- (4) The contractor must promptly notify the NFRMPO whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the NFRMPO.

C. Government-Wide Debarment and Suspension (Nonprocurement)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its quote or proposal, the Consultant or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the NFRMPO. If it is later determined that the Consultant or proposer knowingly rendered an erroneous certification, in addition to remedies available to the NFRMPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Consultant or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Consultant or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**** MUST COMPLETE AND SUBMIT APPENDIX B: DEBARMENT AND SUSPENSION CERTIFICATION ****

D. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] – Contractors who apply or quote for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**** MUST COMPLETE AND SUBMIT APPENDIX A: 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING ****

E. No Obligation by the Federal Government

The purchaser and Contractor acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

F. Termination

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provision of this contract, the MPO may terminate this contract for default. The MPO shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contract will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performances set forth in this contract.

G. Breaches and Disputes

- (1) *Disputes* – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the NFRMPO’s Executive Director. This decision shall be final and conclusive unless within then (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transportation Planning Director. In connection with any such appeal, the Contractor shall be afforded and opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon_the Contractor and the Contractor shall abide by the decision
- (2) *Performance During Dispute* – Unless otherwise directed by the NFRMPO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- (3) *Claims for Damages* – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages

therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

- (4) *Remedies* – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the NFRMPO and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or if a court of competent jurisdiction with the State in which the NFRMPO is located.
- (5) *Right and Remedies* – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of and duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the NFRMPO or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, no shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

H. Governing Law

The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement.

I. Severability

In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.