

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

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

**Request for Qualification
For
IT Support Services**

September 2020



North Front Range
**Metropolitan
Planning
Organization**

RFQ NO. A2020-001

Proposals Due October 6, 2020

Merideth Kimsey, Accounting Clerk III, Procurement Specialist

E-Mail: mkimsey@nfrmpo.org

NFRMPO

419 Canyon, Suite 300

Fort Collins, CO 80521

Phone: (970) 800-9560

Contents

SECTION A: REQUEST FOR QUALIFICATIONS	3
SECTION B: INSTRUCTIONS FOR PROPOSAL SUBMISSION	4
SECTION C: OVERVIEW	5
SECTION D: NATURE OF SERVICES REQUIRED	5
1.0 INFRASTRUCTURE ARCHITECTURE	5
SECTION E: SCOPE OF WORK	6
1.0 LOCAL PC SUPPORT	6
2.0 ONGOING MAINTENANCE OF SERVERS	6
3.0 PURCHASE OF HARDWARE, SOFTWARE, AND ONLINE SERVICES	7
4.0 NOTIFICATION AND RESPONSE TIME REQUIREMENTS	7
5.0 SCHEDULED COMMUNICATIONS WITH NFRMPO	7
6.0 INVOICING	8
SECTION F: PRICING	8
SECTION G: SUBMITTALS	9
1.0 TECHNICAL PROPOSAL	9
2.0 ADDITIONAL DOCUMENTS REQUIRED	9
SECTION H: EVALUATION AND AWARD	10
1.0 EVALUATION AND ASSESSMENT OF AWARD	10
2.0 INTERVIEWS	11
3.0 FINAL SELECTION	11
4.0 RIGHT TO REJECT PROPOSALS	11
SECTION I: PROTEST PROCEDURES	11
1.0 FILING OF PROTEST	11
2.0 DECISION	12
3.0 WITHHOLDING OF AWARD	12
SECTION J: CONSULTANT'S SIGNATURE PAGE	13
APPENDIX A: CERTIFICATION REGARDING LOBBYING	14
APPENDIX B: DEBARMENT AND SUSPENSION CERTIFICATION	15
APPENDIX C: SAMPLE CONTRACT	16

REQUEST FOR QUALIFICATIONS
#A2020-001- IT SUPPORT SERVICES
PROPOSALS DUE: 3:00 P.M. Mountain Daylight Time (MDT)
Tuesday, October 6, 2020

SECTION A: REQUEST FOR QUALIFICATIONS

The North Front Range Metropolitan Planning Organization (NFRMPO) is inviting qualified consultants to participate in their Request for Qualifications (RFQ) to provide IT support services in accordance with the specifications provided within this request.

The North Front Range Metropolitan Planning Organization (NFRMPO) posts current bid, quote, and proposal opportunities on the Rocky Mountain E-Purchasing System (RMEPS) website. We encourage vendors and contractors to take advantage of free registration with RMEPS to see all of our available opportunities. If you need help registering, please call the Rocky Mountain E-Purchasing Group support department toll free 1-800-835-4603. Below is a link to their website.

Rocky Mountain E-Purchasing Group: www.BidNetDirect.com/colorado

A copy of the RFQ may also be downloaded from the NFRMPO website:

<http://nfrmpo.org/RFQs-rfqs>.

This Request for Qualifications must be received prior to 3:00 P.M. MDT (our clock), on October 6, 2020.

All proposals should be emailed to Merideth Kimsey, Accounting Clerk III at mkimsey@nfrmpo.org or through the RMEPS website prior to the deadline as a single PDF document. **Proprietary information needs to be identified as such and placed in a separate section of the response.**

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 Merideth Kimsey at mkimsey@nfrmpo.org.

Questions concerning technical aspects of the IT Support Service proposal should be directed, in writing via email, to Suzette Mallette at smallette@nfrmpo.org.

No questions will be accepted after September 29, 2020. Answers to questions received will be posted on the Rocky Mountain E-Purchasing System (RMEPS) and <http://nfrmpo.org/RFQs-rfqs/> and sent out via email to any consultant who indicates an intention to participate in the RFQ and provides a valid email address no later than September 29, 2020.

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 a contract will be cause for removal of supplier's name from the NFRMPO approved vendors 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 ninety (90) 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 RFQ.

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 contract awarded, to any person, firm, or corporation in default on any obligation to the NFRMPO.

No proposal will be accepted from or any contract 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 is soliciting proposals for ongoing IT support services for their office at 419 Canyon Avenue, Suite 300, Fort Collins, CO 80521 in accordance with the scope of services provided within this proposal.

SECTION D: NATURE OF SERVICES REQUIRED

The North Front Range Metropolitan Planning Organization (NFRMPO) is an association of local governments formed to meet local needs and federal transportation and air quality planning requirements in the North Front Range. The NFRMPO does long-range and short-range transportation planning and prioritizes projects in those plans which receive state and federal funding. The NFRMPO is a government organization funded through federal and state grants as well as local funds. NFRMPO daily operations also include a vanpooling service.

1.0 Infrastructure Architecture

The infrastructure architecture for the NFRMPO includes:

- 1.1 Approximately 15 local PC users
- 1.2 Approximately 17 maintained computers, including laptops, with
 - a. Microsoft Windows 10 Pro
 - b. Microsoft 365 apps for Business
 - c. Antivirus – Webroot for desktops and servers
 - d. Microsoft Dynamics GreatPlains (accounting software)
 - e. E-source Manager (Online Bill Pay add-on for GreatPlains)
 - f. ArcGIS (mapping software) & TransCAD (mapping and modeling software)
- 1.3 Four (4) virtual servers (Power Edge R620) hosted on one (1) onsite machine
 - g. Server 01 – Microsoft AD/DNS/Domain Controller
 - h. Server 02 – Microsoft Exchange Application Server
 - i. Server 03 – Microsoft AD/DNS/File Server/Print Server
 - j. Server 04 – E-Source SQL Server (for online payments)
- 1.4 Meraki MX64
- 1.5 UniFi Switch 48 Port
- 1.6 UniFi Switch 8 Port
- 1.7 UniFi AP
- 1.8 Datto S3B1000
- 1.9 Synology DS 918+
- 1.10 Network Printers

- k. Sharp MX-6070
- l. HP Design Jet T1600
- m. HP 1320N

1.11 The NFRMPO maintains two websites, www.nfrmpo.org and www.vangovanpools.org, with the vanpool website hosted externally. The NFRMPO servers hosts the nfrmpo.org website. The nfrmpo.org website is implemented with WordPress.org using 30 active plugins. Website and maintenance expertise are required.

SECTION E: SCOPE OF WORK

The NFRMPO is seeking a firm to provide IT support services for the entire NFRMPO network architecture.

1.0 Local PC Support

The selected contractor will provide monthly PC Support for approximately 15 local PC users through primary contact to include:

- Providing timely on-call PC support, including phone and email contact
- Support new and existing computers and related hardware
- Software and driver installation support as necessary
- Maintaining a list of software licenses for purchase and re-installation of software on local PCs
- Virus protection removal and repair
- Managing software updates and patching for local PCs within 14 days and critical patches with 48 hours of release.

2.0 Ongoing Maintenance of Servers

The selected contractor will maintain the servers housed at the NFRMPO office. The server maintenance includes:

- Assisting NFRMPO accounting staff with PCI DSS compliance for online payment processing through banking relationship
- Software and driver installation
- Prompt addition or removal of local user accounts to include Microsoft Outlook email accounts
- Maintaining a list of software licenses for purchase and re-installation of software on servers
- Establishing remote connection to the servers housed at the NFRMPO office for Contractor use
- Establishing a smooth transition, if necessary, for remote access, currently VPN
- Managing server software updates and patches and maintaining general server health

(including patches installed within 14 days, and critical patches within 48 hours of release)

- Maintaining the existing backup system for the servers
- Assisting Njevity (<http://www.njevity.com/>) with maintenance of Great Plains software
- Maintaining SQL server and databases

3.0 Purchase of Hardware, Software, and Online Services

The selected contractor may, if it financially benefits the NFRMPO, serve as the purchasing agent to leverage their wholesaler relationships and invoice the NFRMPO for new PCs, hardware, and software including:

- Recommendations for annual replacement of 2-4 local PCs
- Maintain list of software licenses for purchase and re-installation of software on local PCs. The selected contractor will schedule a meeting with the NFRMPO to discuss all current licenses and may establish themselves as the point-of-contact with re-sellers (Adobe, SPSS, etc.)
- Assist as needed with purchased online services, including
 - SSL Certificates
 - Website Hosting
- Assist as needed with remotely-hosted web-development software

All purchases must be made according to Federal funding regulations and the NFRMPO's procurement policies, including price comparison documentation from at least three (3) sources including DBE providers where possible.

4.0 Notification and Response Time Requirements

The selected contractor is expected to provide advance notice of anticipated user downtime, including server and PC maintenance. Notice must include reasonable estimations of the length and scope of downtime. (Example: All internet connectivity will be unavailable for 24 hours.)

When possible, the NFRMPO requires at least one (1) week notice of intended downtime lasting more than 30 minutes, to be scheduled at a mutually convenient time.

Projects which necessitate multiple instances of user downtime must be outlined and approved in advance, including scheduled downtime.

In the event of unplanned downtime, office-wide access to internet and server files is expected to be restored to full working order within one (1) business day. Single workstation downtime must be resolved within one (1) week.

5.0 Scheduled Communications with NFRMPO

The selected contractor will provide the following report and communications regarding the status of the NFRMPO IT architecture to include:

- A monthly report emailed no later than the 15th of the following month to the designated

staff contact at the NFRMPO, regarding the status of the servers and local PCs, to include:

- Software updates
- Viruses blocked / Spyware management
- Uptime report for all systems, including PCs, servers, and printers
- Resource management & availability
- A written annual evaluation of each server at the close of the calendar year, no later than January 15th
- A scheduled annual meeting with the NFRMPO no later than January 30th to discuss the current state of the NFRMPO IT architecture to include:
 - Cost-saving efficiency opportunities
 - Recommended preventative maintenance
 - Recommended communication improvements between selected contractor the NFRMPO
 - Bill rate updates

6.0 Invoicing

The selected consultant will provide a monthly invoice with a detailed breakdown of the maintenance, labor hours (by employee), and hardware/software purchases on behalf of the NFRMPO consistent with SECTION F: PRICING (described below) within 15 days of the end of the month.

Failure to provide any required monthly report may, at the option of the NFRMPO, suspend the processing of any incomplete payment request.

SECTION F: PRICING

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

- Monthly price per unit to maintain all local PCs as described in the Scope of Work above
- Monthly price per unit to maintain all remotely-hosted servers as described in the Scope of Work above
- Hourly fee for maintenance hours and monthly on-call PC user support hours, along with a proposed number of hours per month to achieve the responsibilities outlined in the Scope of Work.
- Monthly price to maintain the nfrmpo.org website on WordPress as outlined in the Scope of Work.
- Hourly fee for additional website support.

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

1.0 Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the consultants seeking to provide ongoing IT support services to the NFRMPO. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the consultants.

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

While additional data may be presented, the Technical Proposal must include:

- Company history and experience in providing IT services
- The names and qualifications of the company representatives responsible for:
 - Providing information during the evaluation process
 - Project account manager for the duration of the contract period
 - Primary staff providing direct support to NFRMPO staff, local computers, the NFRMPO servers, and the website.
- History and experience in providing IT services for the proposed primary staff providing direct support to the NFRMPO.
- Company policies for dealing with problems which fall outside the primary support staff's areas of expertise.
- A written description of the proposed products and services as required in SECTION E: SCOPE OF WORK.
- A listing of three to five references of current customers that the NFRMPO can contact at their discretion.

2.0 Additional Documents Required

In addition to the Technical Proposal all proposals **must** include the following documents and be submitted in digital form:

- Pricing Table as requested in SECTION F: PRICING
- Completed SECTION J: CONSULTANTS SIGNATURE PAGE. 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: EVALUATION AND AWARD

1.0 Evaluation and Assessment of Award

All proposals shall remain subject to initial acceptance 90 days after the date of the RFQ closing

All responsive proposals submitted will be evaluated by a selection committee composed of NFRMPO staff. Proposals will be rated according to the following qualifications on a scale of 1 to 5 with 1 being poor, 3 being average and 5 being outstanding. A weighted factor is applied based on importance of the criteria. The rating multiplied by the weighting factor gives the total available points. Recommended weighting factors for the criteria are listed adjacent to the qualification.

Firms shall be evaluated on the following criteria:

Weighting Factor	Qualification	Standard
2.0	Scope of Proposal	Does the proposal show an understanding of the support needed, methodology to be used, and results that are desired from the firm?
2.0	Assigned Personnel	Do the persons who will work on the contract have the necessary skills? Are sufficient people of the requisite skills assigned to the contract?
1.0	Responsiveness	Can the work be completed in the time frame required? Can they meet the required timelines for work downtimes?
1.0	Motivation	Is the firm interested and are they capable of doing the work in the required time frame?
2.0	Cost	Do the proposed costs compare favorably with the other proposals and budget estimates?
2.0	Firm Capability	Does the firm have the support capabilities the assigned personnel require? Has the firm supported agencies/businesses with similar needs? Does the firm have the experience required?

2.0 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 select a consultant without holding interviews.

Please Note: Consultants selected for interviews should clear their calendars for interviews beginning at **1:00 P.M., October 15, 2020** to meet with the selection Committee. Interviewed consultants should be prepared to have key staff at all levels available for the interview

2.1 Oral Presentations

During the Interview portion of the evaluation process oral presentation may be made. Such presentation will provide consultants with the opportunity to expand on their proposed solutions to the needs of the NFRMPO.

3.0 Final Selection

Ranking will be done by the Selection Committee and the responsive consultant with the top score will be selected. The selected consultant will be offered a one-year contract with annual renewals for up to four years. Following notification of selection, it is expected a contract will be executed between both parties within 10 business days.

4.0 Right to Reject Proposals

Submission of a proposal indicates acceptance by the consultant of the conditions contained in this request for qualifications unless clearly and specifically noted in the proposal submission and confirmed by the North Front Range MPO and the consultant selected.

The North Front Range MPO reserves the right without prejudice to reject any or all proposals.

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 RFQ 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 provide services in the manner herein described 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. However, all proposals shall be irrevocable for ninety (90) calendar days from the day of the solicitation opening.

The consultant agrees and warrants that the undersigned certifies that no one 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 of 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 merit 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 certified copy of any policy and any endorsement thereto.

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 act, omission, error, professional error, mistake, negligence, or other fault 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, 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. ILLEGAL ALIENS

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 an illegal alien 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 an illegal alien 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 an illegal alien 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 an illegal alien 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 an illegal alien who is performing work under the Agreement; and

2. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection (1) hereof, the subcontractor does not stop employing or contracting with the illegal alien 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 an illegal alien 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.

X. 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 of blank 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: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing Professional Agreement for Services was subscribed, sworn to and acknowledged before me this _____ day of _____, 20____ by _____, as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A

SCOPE OF SERVICES

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

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me _____
day of _____, 20_ by _____, as _____ of
_____.

My commission expires:

Seal:

Notary Public

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.

_____ Date

Consultant Signature

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me _____ day of _____, 20____ by _____, as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT B
COST PROPOSAL

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.