

**NORTH FRONT RANGE TRANSPORTATION &  
AIR QUALITY PLANNING COUNCIL  
(DBA as North Front Range Metropolitan Planning  
Organization or MPO)**

REQUEST FOR QUALIFICATIONS

FOR

LEGAL SERVICES

RFQ MK-2018-01A

Proposal Due Date: 3:00 p.m. MDT [October29,2018]



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NORTH FRONT RANGE TRANSPORTATION & AIR QUALITY PLANNING COUNCIL  
REQUEST FOR QUALIFICATIONS

RFQ MK-2018-01A - Legal Services

I. INTRODUCTION

A. General Information

The NORTH FRONT RANGE TRANSPORTATION & AIR QUALITY PLANNING COUNCIL (also known as the North Front Range Metropolitan Planning Organization or "MPO") is requesting proposals from qualified law firms to provide legal services. For the MPO to comply with changing Federal Highway requirements. We will issue a contract for a one-year period with a renewal option, at the MPO's discretion, for each of the four subsequent fiscal years. These requirements will require the MPO to go out to bid every five years.

The North Front Range Metropolitan Planning Agency (MPO) posts current bid 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 bid opportunities. If you need help registering, please call the Rocky Mountain E-Purchasing Group support department toll free 1-800-835-4603.

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 open bid may also be downloaded from the NFRMPO website ([nfrmpo.org](http://nfrmpo.org)), at the top under Public Notices

Only attorneys who are currently licensed to practice law in the State of Colorado, or law firms including such attorneys, may respond to this Request for Qualifications (RFQ).

The MPO will not reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, an electronic copy in Microsoft Word or Adobe PDF must be received by the MPO at Meredith Kimsey, Procurement, [mkimsey@nfrmpo.org](mailto:mkimsey@nfrmpo.org) by **3:00 pm on October 29, 2018**. The MPO reserves the right to reject any or all proposals submitted. **Proprietary information needs to be identified and placed in separate section of your response.**

Proposals submitted will be evaluated by a selection committee composed of staff and member(s) of the Executive Committee.

During the evaluation process, the selection committee reserves the right, where it may serve the MPO's best interest, to request additional information or clarifications from firms submitting proposals, or to allow corrections of errors or omissions.

The MPO reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFQ, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the MPO and the firm selected.

Interviews, if necessary, for the top ranked firms will be held the week of November 12.

It is anticipated that the selection of a firm will be completed by November 19, 2016. Following the notification of the selected firm it is expected that a contract will be executed between both parties by November 30, 2018.

## **B. Term of Engagement**

A one-year contract is contemplated, with four possible renewals subject to the review and recommendation of the Council in conjunction with staff and the satisfactory negotiation of terms.

## **II. NATURE OF SERVICES REQUIRED**

### **A. General**

The MPO is soliciting the services of qualified law firms to provide legal services for a one-year period with a renewal option, at the MPO's discretion, for each of the four subsequent calendar years.

### **B. Scope of Work**

The North Front Range MPO is an association of local governments formed to meet local needs and federal transportation and air quality planning requirements in the North Front Range. It is one of five MPO's in the State of Colorado. Legal opinions regarding the North Front Range MPO have found that it meets the definition of "local government", and it is therefore subject to Colorado Audit and Budget laws, however since it is not a taxing authority, it is not subject to TABOR. Nearly all the financial activity of the MPO is made up of four primary contracts of federal funds and applicable local match. There is also a vanpooling program that includes fare program revenues. The contracts are on a cost reimbursement basis. The 2019 budget for the MPO was approximately \$2.3 million.

While classified as local government, the MPO does not operate or have regulatory authority in the same way as cities, towns, or Counties.

The offeror shall be readily available to perform the following legal services, as requested by the Executive Director and/or the Council of the MPO:

- Review, draft, and negotiate contracts and leases as requested
- Advise on governmental organization legal issues
- Advise on individual labor and employment matters
- Review personnel, fiscal and other policies, as well as organizations articles of association
- Attend Council and Committee meetings as requested
- Advise on government grant and contract issues
- Advise on Federal Transportation Administration (FTA) and Federal Highway Administration (FHWA) issues.
- Advise on responses to subpoenas, court orders, and request for information from third parties
- Defend lawsuits, administrative claims, or other legal claims
- Conduct litigation as requested
- Other legal services as requested.

Firms are encouraged to suggest additional services not identified above. The selection of the firms does not obligate the MPO to pay for the suggested services unless requested.

Proposer shall be required to submit detailed billing statements for all services billed at an hourly rate broken down into time increments of no more or less than a quarter hour.

### III. DESCRIPTION OF THE MPO

#### A. Contact Person

The Attorney's principal contact with the MPO will be Suzette Mallette, Executive Director.

## B. Background Information

The North Front Range MPO is an organization of local governments that is responsible for long range transportation planning in the North Front Range. There are fifteen local government members in the MPO which are Fort Collins, Greeley, Loveland, Timnath, Berthoud, Windsor, Johnstown, Milliken, Evans, Garden City, LaSalle, Eaton, Severance, and Weld and Larimer Counties. The Colorado Department of Transportation (CDOT) and the State Air Quality Control Commission (AQCC) are also members.

Additional information, including the Articles of Association as amended September 6, 2018, can be found on the North Front Range MPO website: <https://nfrmpo.org/wp-content/uploads/2018-articles-of-association.pdf>, or at the MPO office. Please contact Suzette Mallette, at (970) 416-2174 to arrange to see documents at the MPO office.

## IV. PROPOSAL REQUIREMENTS

### A. Legal Experience

The proposer, firm and assigned attorney(s), should describe its demonstrated legal experience including the following categories:

- Governmental organizations
- Government grants and contracts
- Labor and employment
- General business operations

#### 1. Inquiries

Inquiries concerning the request for qualifications and the subject of the request for qualifications must be made by email no later than Monday, October 22, 2018 to:

Suzette Mallette, Executive Director

[smallette@nfrmpo.org](mailto:smallette@nfrmpo.org)

North Front Range Transportation & Air Quality Planning Council

419 Canyon Avenue, Suite 300

Fort Collins, CO 80521

(970) 416-2174

Any questions and the responses will be provided to all firms who have indicated they wish to provide qualifications. If a firm wishes to receive any clarifications, they may send an email to the executive director requesting them.

UNLESS OTHERWISE SPECIFIED HEREIN, CONTACT WITH PERSONNEL OF THE NORTH FRONT RANGE TRANSPORTATION & AIR QUALITY PLANNING COUNCIL OTHER THAN THE ABOVE REGARDING THIS REQUEST FOR QUALIFICATIONS MAY BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS.

2. Submission of Proposals

The following material must be received by October 29, 2018, for a proposing firm to be considered:

a. One electronic copy in Microsoft Word or Adobe PDF a Technical Proposal to include the following:

i. Title Page

Title page showing the request for qualifications subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.

ii. Table of Contents

iii. Transmittal Letter

A signed letter of transmittal briefly stating the firm's understanding of the work to be done, a statement why the firm believes it to be best qualified to perform the engagement and a statement that the proposal is a firm and irrevocable offer for a period of 60 days.

iv. Technical Proposal

The technical proposal should follow the order set forth in Section IV B, items 2-6 of this request for qualifications.

v. Fee Schedule

The fee schedule should follow the order set forth in Section IV C, items 1-3 of this request for qualifications.

VI, Certification Regarding Lobbying

The Certification Regarding Lobbying (Attachment B) should be completed and included in the proposal

VII. Disbarment and Suspension Certification

The Debarment and Suspension Certification (Attachment C) should be completed and included in the proposal

- b. Legal firms submitting proposals should electronically submit the completed proposal to the following address:

North Front Range MPO  
Meredith Kimsey, Purchasing Agent  
[mkimsey@nfrmpo.org](mailto:mkimsey@nfrmpo.org)  
419 Canyon Avenue, Suite 300  
Fort Collins, CO 80521

**B. Technical Proposal**

1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to provide legal services for the NORTH FRONT RANGE TRANSPORTATION & AIR QUALITY PLANNING COUNCIL conforming to the requirements of this request for qualifications. 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 firm and of the staff to be assigned to this engagement. It should also specify an approach that will meet the request for qualifications requirements.

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 firm's capabilities to satisfy the requirements of the request for qualifications. While additional data may be presented, the following subjects, item numbers. 2 through 8, must be included. They represent the criteria against which the proposal will be evaluated.

2. Independence

The firm should provide an affirmative statement that it is independent of the MPO.

The firm also should provide an affirmative statement that it is independent of all the component units of the MPO as defined by those same standards, including VanGo™.

The firm should also list and describe the firm's professional relationships involving the MPO or any of its boards, commissions, and agencies or component units and agencies, for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest.

In addition, the firm shall give the MPO written notice of any professional relationships entered into during the period of the engagement.

3. License to Practice in Colorado

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in Colorado.

4. Firm Qualifications and Experience

The legal firm should state the size of the firm, the location of the office from which the work for this proposal is to be performed and the number and nature of the professional staff to be employed.

5. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal staff, including partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice in Colorado. Provide information on the government experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of the work outlined in this proposal.

The Proposer should describe the qualifications of attorneys to be assigned to the representation. Descriptions should include;

- Professional and education background of each attorney
- Overall supervision to be exercised
- Prior experience of the individual attorneys with respect to the required experience listed above. Only include resumes of attorneys likely to be assigned to the representation. Education, position in firm, years and types of experience, and continuing professional education will be considered.

Indicate how the quality of staff over the term of the agreement will be assured. Indicate how all levels of staff keep "current" in their knowledge of governmental issues as well as federal and state laws and regulations which may have an impact on the MPO.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. The MPO retains the right to approve or reject replacements.

Other personnel may be changed at the discretion of the proposer if replacements have substantially the same or better qualifications or experience.

6. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility, list the most significant engagements (maximum - 5) performed in the last five years that are like the engagement described in this request for qualifications.

These engagements should be ranked based on total staff hours. Indicate the scope of work, date, engagement partner(s), total hours, and the name and telephone number of the principal client contact

A description of other governmental engagements performed by the local office in the past five years may be included as a supplementary schedule in the proposal.

## C. Fee Schedule

### 1. Price

The MPO will not be responsible for expenses incurred in preparing and submitting the technical proposal or the fee schedule. Such costs should not be included in the proposal.

The first page of the fee schedule should include the following information:

- a. Name of Firm
- b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the MPO. The cost proposal should also certify that the bid is good for at least 60 days.

### 2. Rates by Partner, Specialist, Supervisory and administrative staff level times hours anticipated for each. (Gantt chart)

The second page of the fee schedule should include a schedule of professional fees and expenses, presented in the format provided in the attachment (Appendix D).

### 3. Manner of Payment

Payments will be made based on completed work hours.

## V. EVALUATION PROCEDURES

Firms will be evaluated using the criteria enumerated below. These criteria will be the basis for review of the written proposals as well as the oral interviews, if required

The rating scale shall be from 1 to 5 for each criterion, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating. Each criterion also has a weighting factor as disclosed below.

### A. Review of Proposals

The Selection Committee will use the point formula during the review process to score proposals. The Selection Committee will individually score each proposal by the criteria described in Section B below.

### B. Evaluation Criteria

Proposals are evaluated using three sets of criteria. Firms meeting the mandatory criteria (section 1 below) will have their proposals evaluated and scored for both technical qualifications (section 2) and price. The following represent the principal selection criteria which are considered during the evaluation process.

#### 1. Mandatory Elements

- a. The law firm is independent, licensed to practice in Colorado and not on the state debarment list.
- b. The firm has no conflict of interest with regard to any other work performed by the firm for the MPO.
- c. The firm adheres to the instructions in the request for qualification on preparing and submitting the proposal.
- d. Completed Certification Regarding Lobbying
- e. Completed Disbarment and Suspension Certification

- f. Completed W-9 (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>)

2. Technical Quality

- a. Firm capability--weighting factor = 3.0

- i. The firm's demonstrated experience and performance on comparable government or MPO engagements.

- b. Assigned personnel--weighting factor = 2.0

- i. The quality of the firm's professional personnel assigned to provide legal services and the quality of the firm's management support personnel available for technical consultation.

- c. Scope of Proposal--weighting factor = 2.0

- i. Adequacy of proposed staffing the engagement.

- d. Motivation--weighting factor = 1.0

- i. Interest in completing the work in an effective, efficient, and timely manner.

3. Fees --weighting factor = 2.0

**C. Firms may be interviewed**

After proposals are evaluated, the Selection Committee will develop a list of up to three firms to be interviewed based on the total point evaluation. The MPO reserves the right to select a firm without holding interviews.

#### D. Background Check

A detailed background check will be made of all firms to be interviewed. This will include contact with references listed in the proposal. In addition, the firm may be contacted regarding other matters of significance noted in the proposal. The results of the background check are used by the Selection Committee in ranking the firms.

#### E. Oral Presentations, if held

During the evaluation process, oral presentations may be made. Such presentations will provide firms with an opportunity to answer any questions the Selection Committee may have on a firm's proposal. During the interviews, the Selection Committee will assign points to the various technical and cost criteria described above. **Please note:** Firms selected for interviews should clear their calendars for interviews during the week beginning November 5, 2018 to meet with the Selection Committee. Interviewed firms should be prepared to bring key staff at all levels to the interview.

#### F. Final Selection

Rankings will be done by the Selection Committee and the firm with the top score will be selected.

Following notification of the firm selected, it is expected a contract will be executed between both parties by November 30, 2018.

#### G. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for qualification unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the MPO and the firm selected.

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

## APPENDIX A: FEDERALLY REQUIRED CONTRACT CLAUSES

### 1. - NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) 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.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 2. - PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 3. - ACCESS TO RECORDS AND REPORTS

**Access to Records** – The following access to records requirements apply to this Contract:

- A. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307,

5309 or 5311.

- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- D. FTA does not require the inclusion of these requirements in subcontracts.

#### 4. - TERMINATION

**A. Termination for Convenience** - the NFRMPO may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the NFRMPO to be paid the Contractor. If the Contractor has any property in its possession belonging to the NFRMPO, the Contractor will account for the same, and dispose of it in the manner the NFRMPO directs.

**B. Termination for Default** - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the NFRMPO may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the NFRMPO that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the NFRMPO, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**C. Opportunity to Cure** - The NFRMPO in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the NFRMPO's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the NFRMPO setting forth the nature of said breach or default, the NFRMPO shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the NFRMPO from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**D. Waiver of Remedies for any Breach** - In the event that the NFRMPO elects to waive its

remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the NFRMPO shall not limit the NFRMPO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## 5. - 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.

## **6. - 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 MPO is covered under the Colorado Department of Transportation (CDOT) Disadvantaged Business Enterprise (DBE) program. CDOT has an overall DBE goal of 2.88 percent for FTA-funded projects and 12.15 percent for FHWA-funded projects. A separate contract goal has not been established for this procurement.

(2) "The Colorado Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 {78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4} and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminate

(3) 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 bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(4) 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.

() 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.

## **7. - 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 bid or proposal, the bidder 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 bidder 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 bidder 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 bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 8. BUY AMERICA

The contractor agrees to comply with 49 U.S.C. 5323(j), which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States. Requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2) (ii). Rolling stock must be assembled in the United States.

A bidder or offeror must submit to the FHWA recipient the appropriate Buy America certification with all bids or offers on FHWA-funded contracts. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## 9. - BREACHES AND DISPUTE RESOLUTION

**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 ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an 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.

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

**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.

**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 in a court of competent jurisdiction within the State in which the NFRMPO is located.

**Rights 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 any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the NFRMPO, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor 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.

## 10. - 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 bid 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.

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

**11. - CLEAN AIR**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**12. - CLEAN WATER REQUIREMENTS**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**13. - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

(1) **Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore- shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The MPO shall upon its own

action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **14. - ENERGY CONSERVATION REQUIREMENTS**

**Energy Conservation** – The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **15. - RECYCLED PRODUCTS**

Recovered Materials – The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### **16. - ADA Access**

Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

#### **17. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FHWA’s implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists: (1) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

## **18. - GOVERNING LAW**

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

## **19. - SEVERABILITY**

In the event any provision of this 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.

## **20. - PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS**

This paragraph shall apply to all Professionals whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Professional represents and agrees that:

a. As of the date of this Agreement:

- Professional does not knowingly employ or contract with an illegal alien; and
- Professional has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.

b. Professional shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

c. Professional shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

d. Professional is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If Professional obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Professional shall:

- Notify such subcontractor and the MPO within three days that Professional has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Professional shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the

Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

g. If Professional violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the NFRMPO may terminate this Agreement. If this Agreement is so terminated, Professional shall be liable for actual and consequential damages to the NFRMPO arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

h. The NFRMPO will notify the Office of the Secretary of State if Professional violates this provision of this Agreement and the NFRMPO terminates the Agreement for such breach.

## APPENDIX B: 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.

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**Signature of Contractor's Authorized Official**

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**Name and Title of Contractor's Authorized Official**

Date: \_\_\_\_\_

## APPENDIX C: 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.

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**Executed in (City)** \_\_\_\_\_, **state of** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Authorized Signature**

**Date**

APPENDIX D: SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

FOR LEGAL SERVICES FOR THE NORTH FRONT RANGE MPO

	Standard	Quoted
	Hourly	Hourly
	<u>Rates</u>	<u>Rates</u>
Partners	_____	_____
Staff	_____	_____
Other (specify):	_____	_____
Subtotal	_____	_____
Out-of-pocket expenses:		
Copies		_____
Transportation		_____
Other (specify):		_____

## APPENDIX E: SAMPLE CONTRACT

### PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20xx, by and between THE NORTH FRONT RANGE TRANSPORTATION AND AIR QUALITY PLANNING COUNCIL (the "MPO") and \_\_\_\_\_ ("Professional").

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The scope of services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule stated on each Work Order, a sample of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

2. Time. The services to be performed pursuant to this Agreement shall be initiated as specified on each Work Order. Time is of the essence. Any extensions of any time limit must be agreed upon in writing by the parties hereto.

3. Term. This Agreement shall commence on \_\_\_\_\_, and shall continue in full force and effect until \_\_\_\_\_, unless terminated sooner as herein provided. In addition, at the option of the MPO, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods with fees and costs not to exceed those set forth in **Exhibit B, incorporated herein by this reference.** Written notice of renewal shall be provided to Professional and mailed no later than ninety (90) days prior to contract end.

4. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default, and this Agreement may be terminated.

5. Early Termination by MPO. Notwithstanding the time periods contained herein, the MPO may terminate this Agreement at any time for the MPO's convenience or because of the failure of Professional to fulfill the contract obligations. The MPO shall terminate by providing at least fifteen (15) days prior written notice of termination by delivering to Professional a notice of termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, Professional shall immediately discontinue all services affected (unless the notice directs otherwise) and deliver to the 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 termination is for convenience, the MPO shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of Professional to fulfill the contract obligations, the MPO may complete the work and Professional shall be liable for any additional cost incurred by the MPO. If, after termination for failure to fulfill contract obligations, it is determined that Professional was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MPO.

6. Opportunity to Cure. In the case of a breach or default, the MPO may, in its sole discretion, allow Professional a period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If Professional fails to remedy to the MPO's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Professional of written notice from the MPO setting forth the nature of said breach or default, the MPO may terminate the Agreement without any further obligation to Professional and seek damages, may treat the Agreement as continuing and require specific performance, or may avail itself of any other remedy at law or equity. If the MPO commences legal or equitable actions against Professional, Professional shall be liable to the MPO for the MPO's reasonable attorney fees and costs incurred because of the default. Any such termination for default shall not in any way operate to preclude the MPO from also pursuing all available remedies against Professional and its sureties for said breach or default.

7. Waiver of Remedies for any Breach. If the MPO elects to waive its remedies for any breach by Professional of any covenant, term or condition of this Agreement, such waiver by the MPO shall not limit the MPO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

8. Responsibility. Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services rendered by the Professional, including but not limited to designs, plans, reports, specifications, and drawings and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies.

9. Indemnification. Professional shall indemnify, hold harmless and defend the MPO and its representatives, officers, employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to this Agreement.

10. Insurance. Professional shall maintain commercial general liability insurance in the amount of \$500,000 combined single limits, and errors and omissions insurance in the amount of \$1,000,000.

11. Compensation. In consideration of the services to be performed pursuant to this Agreement, the MPO agrees to pay Professional on a time and reimbursable direct cost basis according to the following schedule:

See fee schedule included in **Exhibit B**, and incorporated herein by this reference,

With maximum compensation (for both the Professional's time and reimbursable direct costs) not to exceed \_\_\_\_\_ for the 2013 audit. Monthly partial payments based upon the Professional's billings and itemized statements are permissible. The amount of all such partial payments shall be based upon the Professional's MPO-verified progress in completing the services to be performed pursuant to the Scope of Services and upon approval of the Professional' direct reimbursable expenses. Final payment shall be made following acceptance of the work by the MPO.

12. Records and Reports. The MPO and Professional shall maintain all books, records, and other documentation pertaining to the Scope of Services and necessary to completely substantiate all costs incurred and billed to the MPO during the term of this Agreement for a period of three (3) years from the date of final payment under the terms of this Agreement. These records shall be made available for inspection and audit to any state or federal authority authorized to inspect such records and copies thereof shall be furnished at the expense of Professional, if so requested.

13. Ownership of Work Product. Upon final payment, all designs, plans, reports, specifications, drawings, and other services rendered by Professional shall become the sole property of the MPO, which shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use and authorize others to use all such materials for authorized government purposes. Other entities that may reproduce, publish, or otherwise use the designs, plans, reports, specifications, drawings, and other services rendered by Professional include but are not limited to the Colorado Department of Transportation ("CDOT"), the Federal Transportation Administration ("FTA"), and the Federal Highway Administration ("FHWA").

14. MPO Representative. The MPO shall designate, prior to commencement of work, its project representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the MPO Representative.

15. Monthly Report. Commencing at the end of the calendar month following the date of execution of this Agreement and every calendar month end thereafter, Professional 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.

16. Independent Contractor. The services to be performed by Professional are those of an independent contractor and not of an employee of the MPO. The MPO shall not be responsible for withholding any portion of Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

17. Personal Services. It is understood that the MPO enters into this Agreement based on the special abilities of Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, Professional shall neither assign any responsibilities nor delegate any duties, nor create any subcontracts arising under this Agreement without the prior written consent of the MPO.

18. Conflict of Interests and Prohibited Interests. The MPO and Professional represent that neither has any interests and shall not acquire any interests, directly or indirectly, that would conflict in any manner or degree with the performance and services required to be performed under this Agreement. The MPO and Professional further represent that no member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. In addition no employee, officer, or agent of the MPO shall participate in selection or in the award or administration of this Agreement if a conflict of interest, real or apparent, would be involved. Such conflict would arise when the employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ any of the foregoing, has a financial or other interest in the firm selected for award. The MPO's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-agreements.

20. No Waiver. The MPO's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Professional of responsibility for the quality or technical accuracy of the work. The MPO's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the MPO under this Agreement.

21. No Government Obligation to Third Parties. The MPO and Professional 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 Agreement and shall not be subject to any obligations or liabilities to the MPO, Professional, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

22. Notices. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

Professional:	MPO:
Professional.	THE NFRT & AQPC
Attn:	Attn:
Address	419 Canyon Ave, Ste 300
Address	Fort Collins, CO 80521

23. Incorporation of DOT Terms. This Agreement includes certain Standard Terms and Conditions required by the federal Department of Transportation ("DOT") and other federal and state authorities, whether or not expressly set forth in this Agreement. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Professional shall not perform any act, fail to perform any act, or refuse to comply with any the MPO requests which would cause the MPO to be in violation of the FTA terms and conditions.

24. Grant Assurances and Federal Requirements. This Agreement involves the expenditure of federal funds, which requires the MPO and Professional at all times during the execution of this Agreement to adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Agreement. A non-exhaustive list of federal laws and regulations that may be applicable is included below. By signing this Agreement, Professional avers that it is his or her responsibility to be aware of the requirements that may be imposed by the following federal laws and regulations, and others not listed, that he or she is aware of any such requirements, and that he or she will comply with all applicable laws and regulations.

a. Laws and regulations prohibiting false claims and statements from being made to the federal government, 31 U.S.C.A § 3801, *et seq.*, 49 C.F.R. Part 31, and 18 U.S.C.A. § 1001;

b. Federal privacy law, 5 U.S.C.A. § 552;

c. Nondiscrimination and equal employment opportunity laws in accordance with Title VI of the Civil Rights Act, 42 U.S.C.A. § 2000d; § 303 of the Age Discrimination Act of 1975, 42 U.S.C.A. § 6102; § 202 of the Americans with Disabilities Act of 1990, 42 U.S.C.A. § 12132 ("ADA"); and Federal transit law, 49 U.S.C.A. § 5332;

d. Mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C.A. § 6201.

25. Binding Effect. This Agreement, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

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

27. Severability. In the event any provision of this 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.

28. Prohibition Against Employing Illegal Aliens. This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Contractor represents and agrees that:

a. As of the date of this Agreement:

1. Contractor does not knowingly employ or contract with an illegal alien; and

2. Contractor has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.

b. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

c. Contractor shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

d. Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

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

1. Notify such subcontractor and the City within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

g. If Contractor violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

h. The City will notify the Office of the Secretary of State if Contractor violates this provision of this Agreement and the City terminates the Agreement for such breach.

29. Special Provisions. 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.

THE NORTH FRONT RANGE TRANSPORTATION  
AND AIR QUALITY PLANNING COUNCIL (MPO)

\_\_\_\_\_  
Suzette Mallette, Executive Director

PROFESSIONAL:

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_ [as \_\_\_\_\_ of \_\_\_\_\_.]

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public