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CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL
RFP NO. 45-2016

Open Space and Mountain Parks – Design
Services for Mesa and Shadow Canyon
Road/Trail Repair and Mitigation

ISSUE DATE: May 20, 2016

DUE DATE: 4:00 PM, Friday, June 10, 2016

City of Boulder
Open Space and Mountain Parks Department

CONTACT:
Greg Seabloom

SeabloomG@bouldercolorado.gov

**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL**

#45-2016

CONSULTING/PROFESSIONAL SERVICES

**Open Space and Mountain Parks (OSMP)
- Design Services for Mesa and Shadow Canyon
Road/Trail Repair and Mitigation**

Issued: May 20, 2016

The City of Boulder, CO ("City") is soliciting proposals from qualified consulting firms to provide professional design services for the Mesa and Shadow Canyon South Road/Trail Repair Project. This project will repair a low volume gravel road that also serves as a trail and was damaged in the 2013 Flood. The project will be part of the City's flood recovery FEMA reimbursement program and will require compliance with all FEMA guidelines and provide the appropriate documentation.

The design work will include conceptual, preliminary and final design of the repairs including bid plans, specifications, and estimates. The project will repair severe erosion, damage to culverts and rock walls, and incorporate sustainable features such as rolling dips and balancing of existing materials. It is particularly important that project designs on the OSMP Division's property preserve sensitive habitat, limit impacts to adjacent natural and cultural resources, and create sustainable road and trail design. The selected firm or team will be responsible for all necessary project documentation, including FEMA documents.

In accordance with the specifications of the RFP, sealed proposals will be received in the office of the purchasing coordinator on or before **4 P.M. Mountain Time, June 10, 2016**. Late proposals will not be considered.

A copy of the Request for Proposal (RFP) may be obtained from the web site at:

www.rockymountainbidsystem.com

Sealed Proposals shall be plainly marked 'RFP #45-2016, OSMP Design Services for Mesa and Shadow Canyon Road/Trail Repair and Mitigation, 4 P.M., June 10, 2016' Proposals can be mailed to:

Pam Andrus
City of Boulder – Purchasing Division
P.O. Box 791
Boulder, Colorado 80306-0791

Hand delivered proposals must be delivered to the office of the Purchasing Coordinator, 1777 Broadway, Boulder, CO 80302

The proposal is prepared at the Respondent's expense and becomes a city record and therefore a public record.

The services upon which proposals are submitted shall equal or exceed the specifications

outlined in the RFP. Preference is hereby given to labor, materials, supplies or provisions produced, manufactured or grown in Colorado, quality and price being equal to articles or services offered by competitors outside the State of Colorado.

The city, acting through its duly authorized representatives, shall have the right to reject any and all proposals and waive any informality or irregularity contained in said proposal.

City of Boulder, Colorado
A Municipal Corporation

By: _____
City Clerk

CITY OF BOULDER
DEPARTMENT OF OPEN SPACE AND MOUNTAIN PARKS (OSMP)

RFP NO. 45-2016

REQUEST FOR PROPOSALS FOR CONSULTING/PROFESSIONAL SERVICES
OSMP Design Services for Mesa and Shadow Canyon
Road/Trail Repair and Mitigation

I. INTRODUCTION

A. Project Description and Goals

The City of Boulder is soliciting proposals from qualified consulting firms to provide design services for a FEMA funded flood recovery project in the southwestern area of OSMP property for design and associated permit support to be completed in 2016. This project will permanently repair damaged facilities resulting from the 2013 Flood. The project will be part of the City's flood recovery FEMA reimbursement program and will require compliance with all FEMA guidelines. The selected firm will be responsible for all necessary project documentation, including FEMA documents.

The project name is the Mesa and Shadow Canyon Road/Trail Repair and Mitigation Project and it typically consists of the repair of a damaged access road that also serves as a trail and any corresponding mitigation. The project length is approximately 2.5 miles; approximate elevations are 5630 ft (road beginning) up to 6540 ft (road end). The design will generally utilize low volume use standards, some of which were created by the United States Forest Service. This access road passes through several ecologically sensitive areas. The project will repair severe erosion, damage to culverts and rock walls, and incorporate sustainable features such as rolling dips and balancing of existing materials. The final design will include intersections and connections to and from existing trails and facilities within the project area, as well as ecological restoration and mitigation designs and plans for any required sites.

The design deliverables will include 30%, 60%, 90%, and 100% design of the project including preparation of bid plans, specifications and cost estimates. City environmental staff will gather data and prepare the environmental permit applications. The successful design firm will work with city staff and provide graphics or documents as needed to supplement the permitting and public processes.

Throughout the design process the consultant will need to coordinate with various OSMP and city staff. The design personnel will work closely with city staff to represent the city's interests (where appropriate) about project decisions.

It is particularly important that project designs on OSMP property preserve sensitive habitat, limit impacts to adjacent natural and cultural resources, and create sustainable road and trail design. On one section of the project, the consultant will provide alternative designs (re-route and repair-in-place options for an approximately 1800-foot section of road) for OSMP to evaluate.

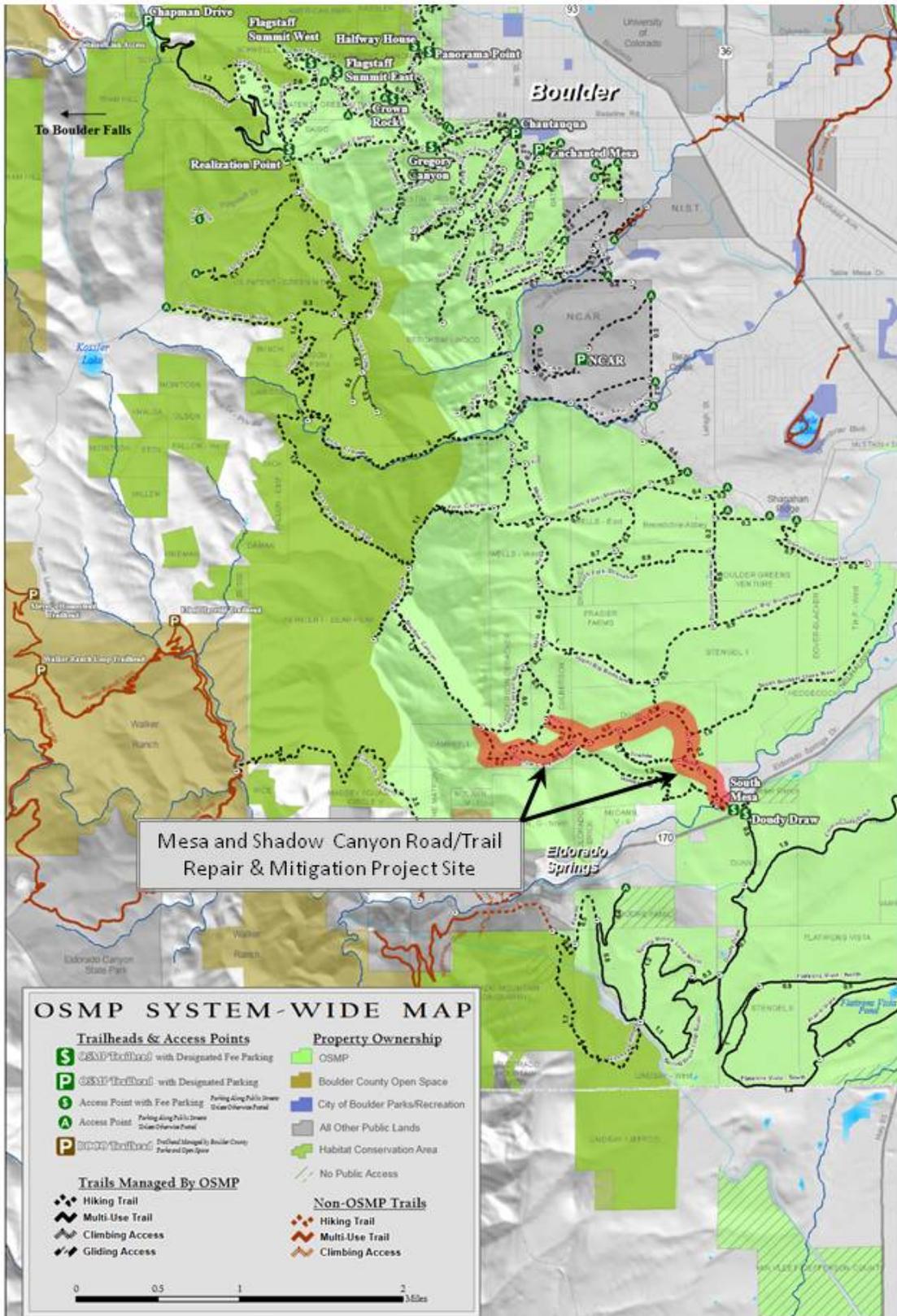
Project Goals:

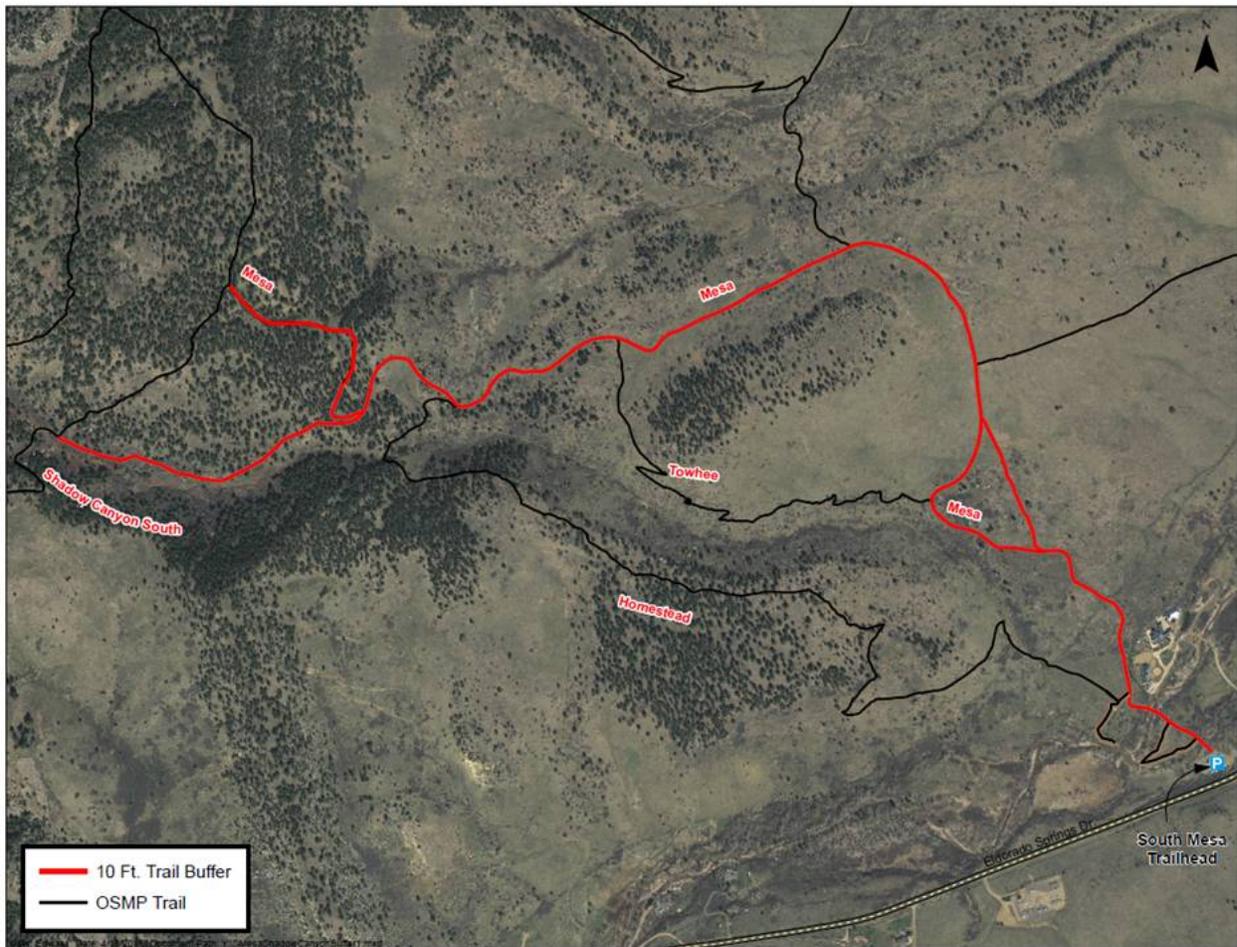
The desired project outcomes are as follows:

- Repair, restore, and replace roadways and trails impacted by the flood event
- Reduce potential for damage by future flood events and minimize maintenance costs by integrating effective mitigation measures and best practices
- Improve connectivity within the trail system
- Address multi-modal uses such as pedestrians, equestrians, and occasional staff and emergency vehicles
- Incorporate environmental & contextual sensitivity into the design
- Implement wetlands mitigation and/or other ecological restoration and re-vegetation projects that may be needed to mitigate for impacts due to construction activities on this project
- Create more resilient infrastructure where appropriate.

B. Project Location:

See overview and detail maps below for a geographic depiction of the Project location.





C. Proposed Project Schedule:

Project schedule milestones are as follows:

June, 2016	Final selection and execution of contract with successful design consultant
June-July, 2016	Conceptual Design and Public Involvement
July-August, 2016	Complete 90% Plans and Specifications
August, 2016	Initiate Permitting Review
October, 2016	Final Plans, Specs and Engineer's Estimate
November, 2016	Advertise for Bids
January, 2017	Award
Early, 2017	Construction begins
September 2017	Construction ends

Due to FEMA's oversight of this project as a result of the 2013 flood, there is a construction completion deadline as shown in the schedule above.

II. PROPOSED SCOPE OF WORK

The Design Consultant shall provide personnel and resources to complete the following Services in a proactive, professional, thorough and precise manner. This draft scope of work reflects a plan of approach based on the known goals as determined by the City. The Design Consultant will be selected based on its ability to analyze the project goals, evaluate the work elements and formulate a work plan. New approaches or modifications to the project work elements would be welcome and should be identified in the proposals. Any changes to the work will be at the approval of the OSMP project staff.

The Scope of Work will include, at minimum, the following:

Project Management – List an approach for managing the project identifying proposed staff for the project, key team positions, schedule, reviews and other project needs. Coordinate work activities with other consultants or City staff throughout the design process, hold at least monthly progress meetings, and complete project closeout including delivery of all project documentation to the City.

Design - The Project consists of the preliminary and final design services for the roadway, trails, drainage improvements, and any required ecological mitigation/restoration. Preparation of site plans, plan and profile, cross section, grading plans and permit application support is included in the design services scope. The Design Consultant shall coordinate all activities, tasks, meetings, communications and deliverables with the City's designated Project Manager. The Design Consultant shall also prepare monthly reports to the City outlining work completed to date, value added services, actual completion vs. budget completion vs. scheduled completion and potential additional services requests on the horizon.

The consultant will collect the necessary data including surveys and geotechnical investigations; assist the city in project coordination efforts and permit application support; and prepare plans, specifications, and cost opinions for the various design phases. The Design Consultant shall produce, at a minimum, the following work products:

- Conduct a visual site inspection of the corridor – Take photographs as appropriate. Document the general site setting, such as current uses, conditions, and topographic features.
- Conceptual design (30%) of a repair-in-place and reroute the lower portion of the road.
- Create conceptual design alternatives for discussion/vetting of lower portion of the project.
- Floodplains Assessment – Identify location of existing floodplains and highlight any potential impacts resulting from planned projects.

The scope will also include supporting the public process including an open house with public meeting design graphics, meeting coordination, management, and documentation. Other key meetings include preliminary design or Field Inspection Review (FIR) Meeting (30%) with corresponding reports (Geotechnical, Structural, Drainage, etc.) in coordination with the start of the environmental process, design surveying, base mapping, and preliminary plans estimate. “Pre-Final” Design or Final Office Review (FOR) Meeting (90%) – includes

completing the environmental process and the FOR Plans (includes all drawings with any structural, storm water master plan (SWMP), drainage, restoration, and details, as well as plan specifications and project estimate. And, the final design (100% complete) including the advertisement/bid plans, specifications, and cost estimate. The city would like a Colorado Professional Engineer Stamped Record Set (11" x 17") of the final plans, and would like a digital GIS shapefile or CAD base file of the of the plans at each of the design stages.

III. PROPOSAL REQUIREMENTS

Pages shall be 8 ½ x 11 unless otherwise indicated. Minimum font size is 10.

A. Proposal Format:

Each proposal should have the following format:

1. Cover or Introductory Letter (2 page limit)
2. Project Approach (2 page limit)
3. Qualification Section, not including resumes (4 page limit)
4. Scope of Work and Schedule Understanding (4 page limit)
5. Optional Section (4 page limit, up to 2 of the 4 pages can be 11x17 paper). This section can include graphs, charts, photographs, sample plan sheets or similar data.
6. Appendix – Past project examples, Commendation Section, Resumes (no page limit)
7. Hourly Personnel Rates for all employees that may work on this project

B. Cover or Introductory Letter:

Cover letter – maximum of 2 pages with the following:

- a. Present highlights of the project approach, qualifications, similar projects and other unique aspects of the proposal.
- b. Address the cover or introductory letter to the City Project Manager:
Greg Seabloom
City of Boulder
Open Space and Mountain Parks Department
PO Box 791
1777 Broadway
Boulder, Colorado 80306
- c. Include the following elements of information in the letter and highlight these items in bold letters: Name, telephone number, and e-mail address of individual to contact regarding their proposal submittal.

C. Project Approach

The discussion should focus on the planned coverage for the design services on the OSMP flood recovery project.

Include the following in this section:

- a. The firm and the project team members' roles in the project, including any sub-consultants
- b. The division of work between the City and the Project Team outlined, including other elements required to successfully complete the project

- c. Proposed approach to supporting public process
- d. The Team's approach to the Project Design
- e. Identify and describe potential coordination with the Project Staff Team, other Departmental Projects, other city departments and outside agencies.
- f. The firm's approach with incorporating environmental and cultural resource protections into the design
- g. The firm's approach to designing any mitigation or restoration/re-vegetation projects associated with the project (if such opportunities or needs arise associated with the project), such as wetland mitigation site plans, ecological restoration plans, etc. Include the role and experience of any subcontractors that may be performing design and landscape architecture work for this aspect of the project.
- h. The firm's approach to working on the 2013 FEMA flood recovery project
- i. The firm's process/procedures for providing quality assurance/quality control throughout the life of the project .

D. Qualification Section

The respondent should present qualifications of the consulting firm to provide these services based on previous relevant project experience. This section should also include an organizational chart indicating the staff members that are available to be assigned to this project. Qualifications, or resumes, of these staff members should be presented including a statement regarding their availability as a percentage of time. The city would like a list of at least five references complete with addresses, email addresses, and phone numbers of clients that have previously contracted for similar work and that are familiar with the work performance of the proposed staff members for the project. Project references involving the team in its entirety are preferred.

The proposal should specifically focus on the types of projects identified in the RFP and typically applicable to Open Space and Mountain Parks projects or other trail or road projects typical to the US Forest Service or other land management agencies. This section should include qualifications of the project team; expertise and experience with similar projects including low volume road design; planning, operational and environmental analysis; public outreach and community involvement; trail and recreation planning; drainage design, natural lands restoration and re-vegetation; and City and County permitting.

This is a Qualifications Based Selection (QBS) process. Cost or billing rates will not be included as a factor in the scoring criteria but will be reviewed for reasonableness. The following information should be submitted to demonstrate the firm's qualifications:

- Demonstration of firm's proposed staff to perform design services for the types of project listed above.
- Experience with FEMA flood recovery or other FEMA administered projects.
- Specific experience with the Boulder OSMP department, and with design/construction of other soft surface trails or low volume roads. Include the firm's familiarity with the associated design standards and practices for soft-surface trails and low-volume roads.

- Qualifications of staff or subcontractors that will be providing restoration design, landscape architecture, or other similar services to implement designs of wetland mitigation and ecological restoration sites associated with the project.
- Descriptions of other similar work that the firm has performed.
- Typical approach for providing engineering services to clients. This should include controls for efficient project delivery, work quality and scheduling of personnel.
- Firm's abilities and experience meeting Disadvantaged Business Enterprise participation goals on affected projects.

The consultant shall provide the necessary personnel and resources to perform professional and technical project administrative, design and management duties to design the project. All tasks assigned to the design consultant must be conducted by a qualified person on the team. This qualified person shall be a professional with the necessary education, certifications (including registrations and licenses), skills, experience, qualities, or attributes to complete a particular task. The team identified for this work shall remain the same for the duration of the Project. Any proposed project team changes are subject to the approval of the City. At a minimum, the design consultant's team shall include a Professional Engineer who will be responsible for signing and sealing the construction plans, specifications, and any necessary permits as the Engineer of Record.

The city would expect the successful consultant for this project have knowledge and expertise in the following areas:

- Low-volume/rural road engineering best practices
- Drainage design
- Sustainability assessments and best practices
- Working with sensitive ecological and cultural resources
- Designing wetland mitigation or other ecological restoration projects, or having a subcontractor with this experience
- Working with land management agencies
- Planning /operational and environmental analysis
- Graphics and illustration
- Geotechnical and hydraulic analysis
- Public participation and communication
- City of Boulder and Boulder County permitting requirements
- FEMA flood recovery or other FEMA construction administered projects

Coordination will likely be required with the following agencies:

- City of Boulder Open Space and Mountain Parks Department
- Boulder County Land Use Department
- City of Boulder Planning and Sustainability Department
- United States Fish and Wildlife Service
- United States Army Corps of Engineers
- Colorado Parks and Wildlife
- Colorado Department of Transportation

E. Understanding of Scope of Work and Schedule

This section should convey the respondent's interpretation of the scope of work and emphasize those aspects of the work that require specific attention. Recommended approaches to this work and revisions and/or additions to the scope of work based on the respondent's experience performing this type of work are welcome and should be included in this section. Descriptions of work elements presented in the proposed scope of work should be expanded and/or modified to address any special considerations or approaches. Any assumptions made to prepare this scope of work should be listed in this section.

The scope of work section will be where the consultant demonstrates to the city that their understanding of the project and its associated requirements. The scope of work should outline what the consultant sees as their role in the projects to demonstrate that the consultant's proposed scope and qualifications will meet the city's needs.

F. Optional Section and Appendix Information

1. Optional Section (4 page limit, up to 2 of the 4 pages can be 11x17 paper). This section can include graphs, charts, photographs, sample plan sheets or similar data.
2. Appendix (no page limit).
 - a. Resumes of individuals to be assigned to the project(s), including their relevant certifications
 - b. Financial statement
 - c. Insurance coverage
 - d. Current, pending, or settled litigation within the last 5 years
 - e. Signed Form 1 (Acceptance of Terms and Conditions)

G. Supplemental OSMP Materials Available to the Consultant

The following sets of plans are available upon request for similar flood recovery type projects:

- Chapman Drive Flood Damage Repair and mitigation
- Sanitas Valley Road – Flood Damage Repair and Mitigation
- Existing Erosion Conditions – Mesa and Shadow Canyon

IV. PROPOSAL SUBMITTAL & REVIEW PROCESS

A. PROPOSAL SUBMITTAL

By submitting a proposal, the respondent agrees to provide all services specified within the RFP, at the times indicated, pursuant to all requirements and specifications as contained therein.

Two hard copies and an electronic copy(Thumbdrive or CD) of the proposal shall be submitted to the city.

B. PROPOSAL MATERIALS (ENVIRONMENTAL PURCHASING POLICY)

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

C. PROPOSAL REVIEW

The consultant shall be selected by the following process:

- a. Proposals will be evaluated by a selection committee comprised of representatives from the OSMP Department who will be managing and working on these projects.
- b. For the purpose of scoring proposals each of the committee members will evaluate each proposal based upon the criteria requested in the RFP and the following scoring. All submittals will be evaluated on the completeness and quality of the content. And, proposals will be evaluated on the basis of direct and concise responses to the items listed under proposal requirements.

Evaluation of each firm’s Proposal will be evaluated using the following criteria:

<u>Evaluation Criteria</u>	<u>Scoring</u>
Project Team member qualifications and experience	25%
Design team experience with OSMP type road/trail repair projects	25%
Project approach for scope and schedule delivery	25%
Experience with FEMA related project delivery	15%
Controls for efficient project delivery, work quality and meeting schedules	10%

- c. The committee will require approximately 20 working days to evaluate the proposals.
- d. A short list of proposers may be selected for oral interviews if deemed necessary.
- e. If oral interviews are determined to be necessary, the initial scoring will be considered preliminary. Final scores will be determined following the interviews.

- f. Negotiations will occur on the staffing and approach to the project with the selected proposer. If negotiations are successful, the proposer and City will enter into a general services contract for the work. The Intent will be to refine the scope and schedule and negotiate a “not to exceed price” that will be included in the purchase order.

CLARIFYING PROPOSAL DURING EVALUATION PERIOD

During the evaluation process, the City has the right to require any clarification or change it needs in order to understand the respondent's view and approach to the project and scope of the work. Any changes to the proposal will be made before executing the contract and will become part of the successful proposer's contract. A copy of a sample standard City of Boulder consultant agreement is included as Attachment A.

V. LIMITATIONS

The City reserves the right to reject any/or all proposals and waive any informalities or irregularities therein.

The proposal is prepared at the Respondent's expense and becomes City record and therefore a public record.

Confidential data, if identified as such, will be held in confidence upon request, if the request is made as part of the proposal and if the City Attorney determines that the data meet the requirements of the Colorado Public Records Act.

VI. GENERAL INFORMATION

For general information call Greg Seabloom by e-mail at SeabloomG@bouldercolorado.gov
Any questions regarding this RFP needs to be submitted by Wednesday, June 8, 2016.

SPECIAL PROVISIONS APPLICABLE TO FEMA REIMBURSABLE PROJECTS

1. Compliance with All Laws. Contractor shall comply with all Federal, State, and local laws and shall require its subcontractors to also be in compliance with all Federal, State, and local laws. Contractor shall include these special provisions in its subcontracts.
2. Socioeconomic Contracting Requirements. FEMA requires that grantees, subgrantees, and contractors take “all necessary affirmative steps” to assure that small and minority firms, women’s business enterprises, and labor surplus area firms are used when possible (44 C.F.R. § 13.36(e)). Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract and shall carry out applicable requirements of 49 CFR Part 13.36(e) in the award and administration of FEMA-assisted contracts. Contractor’s failure 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 the City deems appropriate.

The requirements of 44 CFR 13.36(e) include the following five affirmative steps:

- (a) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises;
 - (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce
3. Compliance with Executive Order 11,246 (44 C.F.R. § 13.36(i)(3)). During the performance of this contract, the contractor agrees as follows:

- (a) No Discrimination. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor 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 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (b) Solicitations. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (c) Labor Unions. Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Executive Order 11246. Contractor 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.
- (e) Information and Reports. Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) Termination for Non-Compliance. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction 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.
- (g) Subcontracts. Contractor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) 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, so that such provisions will be binding upon each subcontractor or vendor. Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Compliance with Copeland Anti-Kickback Act (44 C.F.R. § 13.36(i)(4))

- (a) Contractor. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (b) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (c) Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5. Compliance with the Contract Work Hours and Safety Standards Act (44 C.F.R. § 13.36(i)(6)).

- (a) Overtime requirements. Neither Contractor nor any 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.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and such subcontractor shall be liable 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 (a) 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 (a) of this section.
- (c) Withholding for unpaid wages and liquidated damages. Contractor acknowledges that the Colorado Division of Homeland Security and Emergency Management 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 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 (b) of this section.

(d) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) 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.

6. Notice of Awarding Agency Requirements and Regulations Pertaining to Reporting (44 C.F.R. § 13.36(i)(7)); Notice of Federal Emergency Management Agency (FEMA) Reporting Requirements and Regulations.

(a) General. Contractor acknowledges that the City is using Public Assistance grant funding awarded by FEMA to the Colorado Division of Homeland Security and Emergency Management to pay, in whole or in part, for the costs incurred under this Contract and that as a condition of Public Assistance funding under (major disaster or emergency) declaration FEMA-DR-4145, FEMA requires the Colorado Division of Homeland Security and Emergency Management to provide various financial and performance reporting.

- i. Contractor acknowledges that it is aware of these reporting requirements, as the City may require Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to Colorado Division of Homeland Security and Emergency Management which, in turn, will enable Colorado Division of Homeland Security and Emergency Management to satisfy reporting requirements to FEMA.
- ii. Contractor acknowledges that failure of Colorado Division of Homeland Security and Emergency Management to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Contract.

(b) Applicable Regulations and Policy. Contractor acknowledges that the applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:

- i. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance);
- ii. 44 C.F.R. § 13.41 (Financial Reporting);
- iii. 44 C.F.R. § 13.50(b) (Reports);
- iv. 44 C.F.R. § 206.204(f) (Progress Reports);
- v. FEMA Standard Operating Procedure No. 9570.14, Public Assistance Program Management and Grant Closeout Standard Operating Procedure (Dec. 2013); and
- vi. FEMA-State (or Tribal) Agreement.

(c) Financial Reporting. Contractor acknowledges that the Colorado Division of Homeland Security and Emergency Management is required to submit to the following financial reports to FEMA:

- i. Initial Report. An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
- ii. Quarterly Reports. Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- iii. Final Report. A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

(d) Performance Reporting. Contractor acknowledges that the Colorado Division of Homeland Security and Emergency Management is required to submit to the following financial reports to FEMA:

- i. Initial Report. An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
- ii. Quarterly Reports. Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- iii. Final Report. A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

7. Access to Records (44 C.F.R. § 13.36(i)(10)). The following access to records requirements apply to this contract:

- (a) Access to Documents. Contractor agrees to provide the City, the Division of Homeland Security and Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (b) Permission to Reproduce. 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) Access to Work Sites. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

8. Retention of Records (44 C.F.R. § 13.36(i)(11)). Contractor shall 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 City, the Division of Homeland Security and Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

9. Compliance with the Clean Air Act and Clean Water Act (44 C.F.R. § 13.36(i)(12)).

- (a) Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (b) Contractor shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Colorado Division of Homeland Security and Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) Access to Work Sites. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

10. Compliance with Federal Water Pollution Control Act.

- (a) Contractor shall 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.
- (b) Contractor shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Colorado Division of Homeland Security and Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office
- (c) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FEMA.

11. Energy Efficiency (44 C.F.R. § 13.36(i)(13)). 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.

FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS

The Draft Contract attached is intended for use as is. Use this form to indicate your acceptance of the terms and conditions contained in draft Contract attached.

[Use this form to indicate exceptions that your firm takes to any terms and conditions listed in the agreement attached that is appropriate to your firm's proposed services.

Please indicate exceptions to the RFP itself in this form. Proposals which take exception to the specifications, terms, or conditions of this RFP or offer substitutions shall explicitly state the exception(s), reasons(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms, and specifications of the RFP.

Submitters that take exceptions to any terms and conditions or offer language substitutions shall explicitly state the exception(s), reasons(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the terms and conditions as contained in the draft Contract. Note that such exceptions may render the proposal non-responsive and cause the submittal to be rejected.

If your firm takes no exception to the specifications, terms, and conditions of this RFP, please indicate so.

The City of Boulder asks that vendors do not submit their own contract.

Signed,

By: _____

Title

Date

For: _____

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made effective this ____ day of _____, 20__ by and between the City of Boulder, Colorado, a Colorado home rule city (“the City”), and _____, *[Insert Legal Name]* a _____ *[Insert state of organization]* _____ *[Insert Form of Entity-- such as Corporation, or Limited Liability Company]* (the “Consultants”).

RECITALS

A. City desires that Consultants provide certain consulting services, project management services and such other related services as described in the Scope of Work (the “Project”).

B. The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by the City in connection with the Project and desire to perform such consulting services on the terms and conditions set forth in this Agreement.

COVENANTS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the City and the Consultants agree as follows:

1. SCOPE OF SERVICES.

A. General. The Consultants shall serve as the City’s professional advisors and representatives in connection with the Project and shall consult with and advise the City as it reasonably requires during the term of this Agreement. As a general matter, they shall communicate with the City about the Project only through _____, who has been assigned by the City to the Project as Project Manager.

B. Specific Duties and Responsibilities. In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in the attached Appendix A, captioned “Scope of Work,” which is made a part of this Agreement.

C. Extra Services. Upon the express, written request of the City, the Consultants shall perform services beyond the scope of the duties and responsibilities described in the Scope of Work. The Consultants shall charge the City for such extra services, if any, in accordance with the provisions of Subsection 4.B.

D. Documents. All City data, which includes any data or information of the City that is provided to or obtained by Consultants in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the City, work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Consultants, upon request by the City, agree to

provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Word or WordPerfect). The Consultants shall not provide copies of any material prepared under this Agreement to any other party without the prior written consent of the City.

2. COOPERATION BY THE CITY. The City will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals, and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants' work under this Agreement as soon as reasonably feasible. The City will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The City will provide the Consultants with current, updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

3. TERM AND SCHEDULE. The term of this Agreement shall commence on the effective date, written above, and shall terminate on _____. A detailed project schedule is presented on the attached Appendix A. However, it is understood by the parties that the actual schedule may differ from what is anticipated. The City shall advise the Consultants in writing of each change in the schedule as soon as feasible after it becomes aware thereof, and the Consultants shall adjust the timing of their services so as to comply with the revised schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

4. AMOUNT OF PAYMENTS TO CONSULTANTS.

A. Aggregate Limits. Unless services in addition to those specified in Section 1 are subsequently agreed upon in writing, the total amount paid by the City to the Consultants pursuant to this Agreement shall not exceed the sum of \$_____.

B. Specific Charges. The compensation and expenses for the services rendered under this Agreement shall be calculated using the actual time required by Consultants and its staff to perform the services. The Consultants billing rates are set forth on the attached Appendix B, which is made a part of this Agreement.

- i. Direct expenses incurred by the Consultants in connection with the Project shall be charged to the City on the basis of the direct expenses actually incurred by the Consultants, without any additional surcharge added by the Consultants. The City shall not pay for the expense of Consultants' vehicles, except for mileage reimbursement which will be paid at the current standard mileage reimbursement rate established by the IRS.
- ii. Consultants may be reimbursed for actual costs incurred for necessary project-related travel expenses with the following limitations: potentially reimbursable air travel will be only by commercial carrier at the lowest available fare appropriate to the needs of the mission and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs shall be reimbursed only when efficiency and economy are served by incurring such rental expenses. Use of rented vehicles for personal travel

shall not be reimbursed. Sleeping accommodation costs, if reimbursed, are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. The City may pay Consultants a flat per diem amount per day for meals and incidental expenses while traveling on City business. These per diems are based on U.S. General Services Administration per diems by location, which are updated annually. Other travel-related costs (such as airfare, hotel, taxis, and parking) will be reimbursed with receipts.

C. Inspection of Records. Upon reasonable, advance request, the City may inspect and copy any or all records of the Consultants which would bear on any amounts charged to the City pursuant to this Agreement.

5. TIME OF PAYMENTS TO CONSULTANTS. Consultants shall bill the City directly for services rendered by Consultants at the rates set out in Appendix B. Consultants shall bill the City monthly and provide an invoice within 30 days of the close of each billing period. The invoice shall include: (i) a description of the services rendered in sufficient detail to permit the City to understand the nature of the service; (ii) the aggregate number of hours performed on the matter during the billing period; (iii) an itemization of direct expenses for each task; and (iv) the aggregate fee for the matter in the billing period. The City shall pay within thirty (30) days following the acceptance by the City of the services.

6. QUALIFICATIONS ON OBLIGATIONS TO PAY. Notwithstanding any other terms of this Agreement, the City may withhold any payment (whether a progress payment or final payment) to the Consultants if any one or more of the following conditions exists:

- i. The Consultants are in default of any of their obligations under this Agreement.
- ii. Any part of such payment is attributable to services which are not performed according to this Agreement. (The City will pay for any part thereof attributable to services performed according to this Agreement).
- iii. The Consultants have failed to make payments promptly to any third parties used in the services for which the City has made payment to the Consultants.
- iv. The City, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the City determines that the compensation then remaining unpaid is sufficient to complete the Project or task.
- v. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

7. CONSULTANTS' DUTIES.

A. Abilities, Qualifications, Experience, and Best Efforts. Consultants shall perform the Services in a timely and professional manner consistent with the requirements set forth in the Scope of Work, and in accordance with industry best practices. Consultants agree to utilize its expertise and creative talents in completing the services.

B. No Conflicts. The Consultants represent, covenant, and agree that they have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the City. In case of any conflict between interests of the City and any other entity, the Consultants shall fully and immediately disclose the issue to the City and shall take no action contrary to the City's interests.

C. Subcontractors. Consultants shall be permitted to subcontract the performance of certain services to a third party (a "subcontractor") provided, that the Consultants give prior notice to the City of the subcontractor, outlining the nature and scope of the services to be subcontracted and that the City consents to the subcontracting of such services to such subcontractor. Consultants shall remain responsible to the City in accordance with this Agreement for consulting services performed by any subcontractor. Under no circumstances (including, without limitation, Consultants' failure to make timely and full payments to a subcontractor) shall the City be liable to any subcontractor for payment of any amounts.

D. Limitation on Public Statements and Lobbying Activity. Consultants are retained to provide information and advice to the City that includes confidential data, work product, and other privileged or confidential information that is protected under pertinent laws and City policies. In order to maintain the fact and appearance of absolute objectivity, loyalty, and professionalism, Consultants shall not, without the prior written consent of the City, do any of the following:

- i. Disclose at any time information obtained as a result of this contractual relationship to any third party;
- ii. Lobby any City agency on any pending matter while they are under contract to the City;
- iii. Make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which Consultants is or was retained by the City.

To the extent that the City provides written consent for the disclosure of information or authorizes the making of public statements, the City may impose such conditions upon such disclosure or communications as it thinks appropriate, and Consultants agree to comply with those conditions.

This provision shall not preclude Consultants from providing information to law enforcement officials in connection with any criminal justice investigation.

E. Duty to Warn. The Consultants agree to call to the City's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Consultants (by the City or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Consultants shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the City. Nothing shall detract from this obligation unless the Consultants advise the City in writing that such data may be unsuitable, improper, or inaccurate and the City nevertheless confirms in writing that it wishes the Consultants to proceed according to the data as originally given.

F. Attendance at Meetings. The Consultants shall attend such meetings on the work required by this Agreement as the City requires. The City will give reasonable notice of any such requirement, so that the Consultants may schedule and attend.

G. Efficiency. The Consultants agree to furnish efficient business administration and superintendence and perform the services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the City.

H. Books and Records. The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Consultants shall make them available for the City's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

I. Payment of Bills. The Consultants shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

8. CONFIDENTIAL INFORMATION. Consultants may receive or have access to data or information from the City and information that the City may have access to from Boulder County. Such data or information, because of applicable law or other obligations with third parties, may be: (i) required to be kept confidential; (ii) not required to be disclosed; or (iii) not a public record under the Colorado Open Records Act ("Confidential Information"). Consultants agree to hold and not disclose any Confidential Information to any person not having a legitimate, need-to-know purpose authorized by the City.

Consultants agree to protect all Confidential Information with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

Consultants agree to immediately notify the City in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.

Notwithstanding the foregoing, nothing in this Agreement shall restrict the Consultants with respect to information or data identical or similar to that contained in the Confidential Information of the City but which: (i) that party rightfully possessed before it received such information from the City as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of the Consultants; (iii) is subsequently furnished rightfully to

the Consultants by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that the Consultants will exercise reasonable efforts to notify the City prior to disclosure.

9. TERMINATION.

A. Termination for Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days prior written notice of termination to the defaulting Party.

B. Termination for Convenience. In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultants written notice at least fourteen days in advance of the termination date. In the event of such termination, the Consultants will be paid for all services rendered to the date of termination, except as set forth in Section 6, above, and upon such payment, all obligations of the City to the Consultants under this Agreement shall cease.

C. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the City may, at its pleasure, suspend the services of the Consultants. Such suspension may be accomplished by giving the Consultants written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultants shall cease their work in as efficient a manner as possible so as to keep their total charges to the City for services under this Agreement to the minimum. No work shall be performed during such suspension except with specific prior authorization by the Project Manager. The City recognizes that suspension and subsequent reactivation may inconvenience the Consultants and will endeavor to provide advance notice and minimize its use. After a suspension has been in effect for thirty days, the Consultants may terminate this Agreement at will.

D. Return of Property. Upon termination of this Agreement, the Consultants shall promptly deliver to the City all City data, which includes any data or information of the City that is provided to or obtained by Consultants in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the City as well as any plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

10. LAWS TO BE OBSERVED. The Consultants shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall indemnify and hold harmless the City against any claim or liability to the extent caused by the intentional or negligent violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

11. PERMITS AND LICENSES. The Consultants shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

12. NO MULTIPLE FISCAL YEAR OBLIGATION. Nothing in this Agreement shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Consultants of any failure to appropriate such adequate monies.

13. INDEPENDENT CONTRACTOR. The relationship between the Consultants and the City is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth in this Agreement. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the City. No employee or officer of the City shall supervise the Consultants. **The Consultants are not entitled to workers' compensation benefits and are obligated to directly pay federal and state income tax on money earned under this Agreement.**

14. INDEMNIFICATION

A. Consultants' Indemnification. Consultants shall indemnify and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable attorneys' fees and costs of defense), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any negligent or intentional act or omission by Consultants or its representatives in the performance of Consultants' obligations under this Agreement, or (ii) any material breach in a representation, warranty, covenant or obligation of Consultants contained in this Agreement. Consultants are not obligated to indemnify the City in any manner whatsoever for the City's own negligence. The Consultants' obligation to indemnify the City as set forth in this Agreement shall survive the termination or expiration of this Agreement.

B. Infringement. The Consultants shall hold and save harmless the City from any and all claims for infringement, by reason of the use of any patented design, device, material, process, or trademark or copyright and shall indemnify the City for any costs, expenses, and damages, including court costs and attorney fees, which it might be obligated to pay by reason of infringement at any time during the prosecution or after completion of their services under this Agreement.

C. Limitations. If this Agreement is for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure,

highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, Consultants' obligation to indemnify or hold harmless the City shall be limited to the amount represented by the degree or percentage of negligence or fault attributable to the Consultants or its agents, representatives, subcontractors or suppliers.

If this Agreement is for architectural, engineering, surveying, or other design services, then the extent of Consultants obligation indemnify or hold harmless may be determined only after its liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Consultants and the City.

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

15. INSURANCE. Consultants agree to procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

- A. Workers' Compensation and Employers' Liability
 - i. State of Colorado: Statutory

- B. General Liability
 - i. General Aggregate Limit: \$2,000,000
 - ii. Per Occurrence: \$1,000,000

Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

- C. Automobile Liability Limits¹
 - i. Bodily Injury & Property Damage
Combined Single Limit: \$1,000,000

Coverage provided should be at least as broad as found in ISO form CA0001 (BAP) including coverage for owned, non-owned and hired autos.

- D. Professional Liability (errors and omissions)²
 - i. Each Claim/Loss: \$1,000,000
 - ii. Aggregate: \$1,000,000

City of Boulder may require that this coverage remain in place for one year after the project is complete.

E. Insurance shall:

¹ Applicable only if Consultants, its agents, employees, or representatives will be using motor vehicles in Colorado while performing work on the Project.

² Applicable only to licensed professionals.

- i. Provide primary coverage;
- ii. Include the City of Boulder and its officials and employees as additional insureds as their interest may appear (except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
- iii. Include a waiver of subrogation for General Liability coverage;
- iv. Issue from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
- v. Be procured and maintained in full force and effect for duration of work.

F. Certificates of Insurance evidencing the coverages described here, shall be forwarded to Purchasing. Certificate Holder shall be: City of Boulder, 1777 Broadway, Boulder, CO 80306.

G. Within seven days after receiving insurer's notice of cancellation or reduction in coverage, Consultants, or its insurance broker, shall notify the City. In either such case, Consultants shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

16. PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES. The Consultants certify that it shall comply with the provisions of section 8-17.5-101 *et seq.*, C.R.S. The Consultants shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Consultants that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Consultants represent, warrant, and agree: (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify or the Department Program; (ii) that the Consultants are prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while services under this Agreement are being performed; and (iii) if the Consultants obtain actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, the Consultants shall be required to:

- i. Notify the subcontractor and the City within three days that the Consultants has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- ii. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultants 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.

The Consultants further agree that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Consultants fail to comply with any requirement of this provision or section 8-17.5-101 *et seq.*, C.R.S. the City may terminate this Agreement for breach and the Consultants shall be liable for actual and consequential damages to the City.

17. INTEGRATION. This document constitutes the entire agreement between the City and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter of this Agreement.

18. NO ASSIGNMENT. This Agreement may not be assigned by Consultants without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

19. AMENDMENT IN WRITING. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both parties.

20. GOVERNING LAW AND VENUE. This Agreement is governed by the laws of the State of Colorado. Any suit between the parties arising under this Agreement shall be brought only in a court of competent jurisdiction for the Twentieth Judicial District of the State of Colorado.

21. FORCE MAJURE. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

22. NO THIRD PARTY BENEFICIARIES. The parties intend no third party beneficiaries under this Agreement. Any person other than the City or the Consultants receiving services or benefits under this Agreement is an incidental beneficiary only.

23. NO WAIVER. No waiver of any breach or default under this Agreement shall be a waiver of any other or later breach of default.

24. AUTHORITY. Consultants warrant that the individual executing this Agreement is properly authorized to bind the Consultants to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

APPENDIX A SCOPE OF WORK

A Scope of Work (“SOW”) needs to define the tasks to be accomplished, the services to be delivered and should include a timeline or a schedule to guide the progress of the Project. The SOW should be written as a definitive statement. The Scope of Work cannot be written by the City Attorney’s Office; the CAO does not know your Project. The Scope of Work will guide your Project and dictate what product the Consultant will deliver.

Not all SOWs are the same, but below are items that should be included in every Scope of Work.

I. PROJECT OVERVIEW. This is the introduction to the Project. Explain what the Project is, its purpose and a sentence or two on how it will be accomplished. Explain the intended outcome of the Project. If possible, tie the purpose to the City’s strategic goals and objectives. If any, identify policies or counsel initiatives that are driving the Project.

II. TASKS. Describe the tasks the Consultants will perform in order to complete the Project. The Project task list should be written as a series of actions or steps so that it logically flows. The tasks should be clearly identified so that, in the event the Consultants are not performing any task or tasks, you can refer them back to this section and request they complete a specific task or tasks. See “V. Schedule” below to layout the task deadlines.

III. DELIVERABLES. Clearly identify the tangible products or outcomes that the Consultants are required to deliver to you for review and approval. State specifically the deliverables to be provided. For example, a “Creative Brief” is a deliverable, however “Presenting the Creative Brief” is not (a) deliverable because it is a task (see II above). One test to verify if something is a deliverable or not is: “can it be emailed?”

IV. REPORTING OBLIGATIONS. Define how and when the Consultants communicate its progress to you. Do you want a written report every month, quarter or annually? State what information you require in a report that will inform you if the Consultants are on schedule and performing as expected.

V. SCHEDULE. Identify the Project’s milestones. This can be presented in a table format and should identify when Tasks, defined above, are to be completed in order to meet the Project’s deadlines.

APPENDIX B
SCHEDULE OF CHARGES