



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

**RFP NO. 39-2015**

**Development Related Impact Fee & Excise Tax  
Studies Update**

**ISSUE DATE: May 29, 2015**

**DUE DATE: 4:00 PM, Thursday, June 18, 2015**

**An Optional Pre-Bid Meeting - Monday, June 8, 2015 @ 1:00 pm MDT via  
webinar/conference call.**

**CONTACT:  
Chris Meschuk  
303-441-4293**

**[meschukc@bouldercolorado.gov](mailto:meschukc@bouldercolorado.gov)**

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REFERENCED COPY ONLY

**CITY OF BOULDER, COLORADO  
REQUEST FOR PROPOSAL  
RFP NO. 39-2015  
CONSULTING/PROFESSIONALS SERVICES**

**Development Related Impact Fee and Excise Tax Studies Update**

Issued: May 29, 2015

The City of Boulder is seeking one or more consultants to update and complete development fee studies related to growth and new development, including 1: Update to the city's 2009 Impact Fee Study; 2: Capital and operating multimodal transportation facilities and services study; 3: Affordable Housing linkage fee on non-residential development; and 4: A study to create a public art program for new development. Consultants are encouraged to make proposals for one or all of the studies. The city intends to review proposals for each of the study areas and select consultants accordingly.

In accordance with the specifications of the RFP, sealed proposals will be received in the office of the purchasing coordinator until 4 P.M. Mountain Time, June 18, 2015. Late proposals will not be considered.

**Official bid documents and all bid addendums are posted on the Rocky Mountain E-Purchasing System (Bidnet) as is our normal procedure. Please refer to the Bidnet website for the latest information on this RFP. You will need to complete a registration on the website (either a paid subscription or free subscription) before having access to RFP documents.**

[www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com)

Proposals shall be prepared at the bidder's expense and becomes a city record and therefore a public record. Please provide 3 hard copies and one electronic copy of the proposal with your submission.

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 lowest responsible and best proposal shall be accepted; provided, however, that 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

## PART I: General RFP Information

### PROJECT SCOPE

The City of Boulder is updating its development-related impact fees and excise tax fee studies. The city has a policy that new growth pays its own way, and is seeking consultants to assist the city in updating the studies and considering new, innovative and effective ways to further enhance the city's impact fees and excise taxes. Due to the specialized nature of some of the studies, the city anticipates that some firms may bid on only one component of the study or one firm may bid on the work together with some sub-consultants. The city last updated the fee studies in 2008-2009, and is seeking one or more consultants to prepare the following studies:

1. An update of the 2009 Impact Fee study for all of the components of the Capital Facility Impact Fee (Fire, Human Services, Library, Municipal Services, Parks & Recreation, and Police) and an update to the Park land component of the Excise Tax Study.
2. A study of both the capital and operating impacts to multimodal transportation facilities and services of new development. The purpose of the study would be to provide the nexus and include the calculations of a multimodal transportation impact fee and/ or excise tax as well as other mechanisms to provide capital improvements and possibly initial and on-going operations and maintenance funding associated with new development. This study would go beyond impact fees and into operational funding tools including some level of consideration of both the needed capital facilities created by new growth as well as identifying revenue sources for both capital facility deficiencies and associated revenues to sustainably fund programs, operations, and maintenance. A scope of work would contain the following general elements:
  - Review of current impact fees, excise taxes and other finance mechanisms to identify best practices for new developments to pay for the capital improvements. This would include a review of the effectiveness of existing fees, taxes and other mechanisms currently in place in other communities to identify potential options.
  - The focus would be on mechanisms used for infill development and re-development as opposed to greenfield development. The review would identify the mechanisms used, their legal rationale and context, what they are used to pay for and what they are restricted from paying for. The review would also provide information on the rates used and the methodology used to determine those rates, as well as the timing of payment and the criteria or triggers used to determine which new developments pay.
  - Analysis of the purpose of any proposed fees and or taxes as it relates to the city's transportation goals and objectives, and/ or service levels. See <https://bouldercolorado.gov/transportation/tmp> for information.

- Review of the potential strategies and funding mechanisms to pay for on-going transportation operations and maintenance associated with new developments.
  - Identify how to fund on-going transportation operations, such as TDM programs, and maintenance related to new developments. The city currently uses a variety of mechanisms to pay for on-going transportation operations and maintenance for new developments and existing commercial and residential properties. For example, in the downtown, parking revenue pays for RTD Eco Passes for all downtown employees. At Boulder Junction, the TDM Access District collects property taxes to pay for RTD Eco Passes and bike- and car-share memberships for employees and residents. For this scope of work, the city would ask consultants to identify other strategies and mechanisms for initial and on-going transportation operations and maintenance associated with new developments.
3. Affordable Housing Linkage Fee on Non-Residential Development - Preparation of a nexus study for an affordable housing linkage fee on new non-residential development that would mitigate the need for affordable and workforce housing created by the development. The goal of the study is to demonstrate the nexus between the purpose of the linkage fee, the fee amount, and the impacts of the non-residential development that the proposed use of the fee proceeds is intended to address. A study was prepared for the city in 2009; the new study would provide a more comprehensive and updated nexus study. The study should:
- Analyze the purpose of a linkage fee as it relates to the city's housing goals and objectives, other city funding sources and programs for affordable housing, and the need for mitigating impacts to middle income housing.
  - The study should include analysis of possible impacts of the proposed linkage fee including but not limited to the potential increase in development costs, escalation of rents, financial impact on nonprofit entities and small business and explore possible application of fee reductions or exemptions as appropriate.
  - Proposals should detail the proposed project approach and methodology, the firm's qualifications and previous experience in preparing similar studies, the firm's knowledge of Boulder and its housing market, and include a proposed process for involving stakeholders.

The city is currently working on Housing Boulder, a new Comprehensive Housing Strategy anticipated to be completed in the next few months that will likely result in new housing goals and policies. In particular, the new strategy includes a focus on concerns relating to loss of middle income households in the city. Respondents should provide a recommendation on the appropriate timing of the study and implementation of an affordable housing linkage fee relative to the city's current Housing Boulder initiative. Depending on the timing, the selected consultant may be asked to provide advice to the city as the Housing Strategy is finalized.

The city currently has an inclusionary housing ordinance that applies to new residential development and is in the process of implementing a citywide affordable housing linkage fee on non-residential development based on a nexus study prepared in 2009. The funds collected from the linkage fee currently in the approval process will be placed in a dedicated fund and will be used to create additional permanently affordable housing that contributes to achieving the city's goal of increasing the proportion of permanently affordable housing units to an overall goal of at least ten percent of the total housing stock. The city's current goal targets low- and moderate-income households and primarily supports the creation and preservation of affordable housing units. This linkage fee is viewed as an interim measure pending completion of a new comprehensive nexus study.

4. Preparation of a study to create a public art program for new development – The City Council will soon be considering a recommendation in the Community Cultural Plan to establish a public art program, which will require a sustainable and sufficient source of funding to implement. The purpose of this study would be to identify best practices across the country including both regulatory and fee based approaches, and recommend options for the city to develop a program. The study should provide the nexus for charging a fee and/ or tax, if that is the preferred option. The use of the funds would be governed by a final public art policy (due for completion in December 2015) and a series of public art strategy documents which would be renewed every few years to guide specific projects funded by the fee.

The following aspects will need to be coordinated across consultants, and depending on the responses, the city may work with one or more consultants to complete the following tasks.

- A proposed process for stakeholder/community involvement.
- An analysis of the cumulative impact of potential fees including a comparative study of Boulder relative to other jurisdictions.
- Analysis of the financial and other possible impacts of the proposed fees and/ or excise taxes including but not limited to the potential increase in development costs, escalation of rents, financial impact on nonprofit entities and small business and explore possible application of fee reductions or exemptions as appropriate.

Among the issues that will need to be considered as the studies are developed and reviewed will be whether to implement all of the components as impact fees or to retain some of them as excise taxes and ask voters to approve changes to the existing excise taxes. Depending on the responses received (whether there is one lead consultant for all of the studies, for example), the city will consider how to assure shared assumptions among the studies as well as coordination in study timing. The project is anticipated to take nine to twelve months.

Proposals should include the consultants understanding of Colorado law to determine legal opportunities and limitations at the local, state, and federal level. Qualifications of importance include without limitation a basic understanding of legal principles of municipal finance, taxation (including state constitutional limitations associated with the Taxpayers Bill of Rights) and laws related to the creation of impact and service fees. If

there are deficiencies in this area, the proposal should identify the level of support that it will need from city legal staff.

## ***PROCUREMENT SCHEDULE***

### TENTATIVE SELECTION SCHEDULE

RFP issued ..... May 29, 2015  
Optional Pre-Bid meeting ..... June 8, 2015  
(1:00 pm MTN time via online webinar/conference call. Email Chris Meschuk  
[meschukc@bouldercolorado.gov](mailto:meschukc@bouldercolorado.gov) by June 4 to obtain a link/call in number)  
Bids Due..... 4:00pm, June 18, 2015  
In-person/online interviews ..... July 6/7, 2015  
RFP Award ..... July 17, 2015

## ***PROJECT CONTACT INFORMATION***

Upon release of this RFP, all consultant communications concerning the overall RFP should be directed to the RFP Coordinator listed below. Unauthorized contact regarding this RFP with other city employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the city. Consultants should rely only on written statements issued by the RFP Coordinator.

Name: Project Manager  
Chris Meschuk  
Address: City of Boulder  
Department of Community Planning & Sustainability  
PO Box 791  
Boulder, Colorado 80306  
Telephone: 303.441.4293  
E-mail: [meschukc@bouldercolorado.gov](mailto:meschukc@bouldercolorado.gov)

## PART II: Required Proposal Response

### 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.

### PROPOSAL CONTENT

The proposal must contain all of the following information, in the same sequence as presented below. Each proposal should provide a straightforward and concise presentation adequate to satisfy the requirements of this RFP. Please limit length of proposal sections to the maximum pages noted.

#### Section 1) Cover Letter

A cover letter explaining the consultant team and the project contact person(s) plus relevant phone numbers and email addresses. Clearly state which one or more of the four project components you are responding to. Provide brief background experience, specific to this project, for the principal individuals who will work on this project. Provide a list of the sub-consultants intended to be hired for the project and relevant background experience. Provide a statement of staff time commitment to adhere to the desired schedule. (Limit to no more than two pages.)

#### Section 2) Project Approach

A concise explanation of the consulting team's approach to all or part of the project components is to be given in this section. Please include the following:

- A. Description of the consulting team roles and responsibilities, including the project manager (one page maximum)
- B. Describe the team's approach to each project component that is included in the response, including the understanding of the desired outcome and potential innovative and cutting edge approaches that other communities have

implemented. Please reference the scope of work section of this RFP for detail on each component.

- C. Describe the team's approach to the public engagement process and a stakeholder engagement plan.
- D. Timeline of proposed project milestones (one page maximum)

**Section 3) Project Fees**

- A. Description of each major task that is anticipated for each component of the project – purpose of task, number of hours required per staff member, and expected end product. (Limit pages to the extent possible.)
- B. Provide the fees for all the services described by the respondent in the preceding pages, plus hourly fees for additional services if needed.
- C. Signed Form 1.

**Section 4) Consultant Experience**

- A. Provide resumes for key employees of the contractor as well as any subcontractors.
- D. Provide examples of similar projects, including client contact name, budget, date of completion, and key staff participants.

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**FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS**

Use this form to indicate exceptions that your firm takes to any terms and conditions listed in the Consulting Services Contract Boilerplate attached to this RFP, as well as the RFP itself. 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.

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

List exceptions here:

Signed,

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

\_\_\_\_\_  
Title Date

For: \_\_\_\_\_

REFERENCE COPY ONLY

# FORM 2: FEE SCHEDULE AND COST PROPOSAL or BID FORM

## BID PROPOSAL FORM

BID NO: 39-2015  
BID OPENING: 4:00 pm, Thursday, June 18, 2015  
PROJECT: Development Related Impact Fee & Excise Tax Studies Update  
OWNER: City of Boulder (hereinafter "the owner")

PROPOSAL SUBMITTED BY:  
(hereinafter "the bidder")

\_\_\_\_\_  
Consultant (PRINT)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
Date

### PART 1: TERMS AND CONDITIONS

All bids shall be submitted on this form. All bid prices offered for items listed on this page shall be firm bids for equipment furnished complete in compliance with the specifications which are a part of this bid document.

The undersigned Bidder does hereby declare and stipulate that this bid is made in good faith without collusion or connection to any person or persons bidding for the same work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Bidders, the Specifications and Drawings, and all other Bidding Documents, all of which have been examined by the undersigned.

The City of Boulder reserves the right to make the award on the basis of the bid deemed most favorable, to waive any formalities or technicalities and to reject any or all bids. It is further agreed that this bid may not be withdrawn for a period of sixty (60) calendar days after closing time.

RECEIPT OF ADDENDA: the undersigned Bidder acknowledges receipt of the following Addenda to the Advertisement to Bid, Specifications, Drawings and other Contract Documents.

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ By: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ By: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

## **Appendices**

### **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**

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”).

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.**

**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.

**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.

**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.

**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 which in any manner affect those engaged or employed in the work or which in any manner 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 defend, protect and indemnify the City against any claim or liability arising from or based on the 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, defend 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 fees and disbursements of legal counsel and accountants), 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

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. 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 Limits

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)

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:

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]

REFERENCE COPY ONLY

The parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed Agreement.

CONSULTANTS

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

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

STATE OF COLORADO )

) ss.

COUNTY OF BOULDER )

Acknowledged before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

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

(SEAL)

CITY OF BOULDER

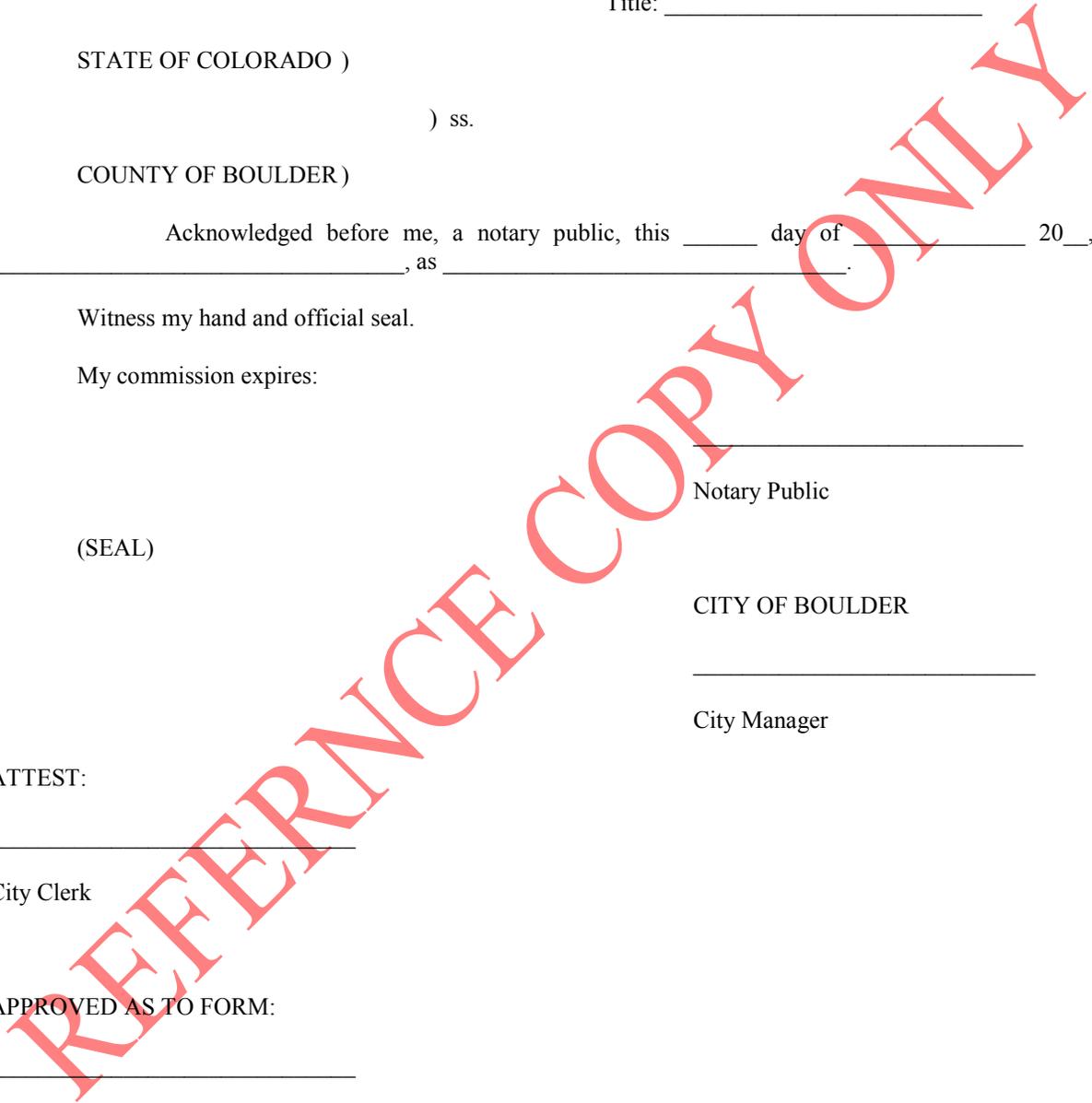
\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office



APPENDIX A

SCOPE OF WORK

REFERENCE COPY ONLY

**APPENDIX B**

SCHEDULE OF CHARGES

REFERENCE COPY ONLY