



REQUEST FOR PROPOSAL (RFP – 11 - 16)

For

Traffic Signal Turning Movement Counts

For

CHEYENNE METROPOLITAN PLANNING ORGANIZATION

AND

CITY OF CHEYENNE, WYOMING

February 12, 2016

Issued by:

**MPO
For the
City Engineer's Office
City of Cheyenne, Wyoming**

Proposal Statements due:

4:00 PM

February 25, 2016

at:

MPO Office, Room 205

Attn: Tom Mason

**2101 O'Neil Avenue
Cheyenne, WY 82001
(307) 637-6299**

REQUEST FOR PROPOSAL No. RFP - 11 - 16

PROJECT NAME: Traffic Signal Turning Movement Counts

The City of Cheyenne, Wyoming and the Cheyenne Metropolitan Planning Organization (City/MPO), hereby requests proposals for data collection for the above named project. If the proposer is an out-of-state corporation, the firm shall be registered with the Secretary of State of Wyoming to do business in Wyoming.

Proposers shall submit, in writing, information outlined under the PROPOSAL FORMAT section. The submittal shall address the selection criteria as listed herein and such other data as may be useful in evaluating the ability of the firm to perform the work required. Proposals should be short and concise. **Proposals are requested for data collection and collation.**

Information contained in the Request For Proposal and proposal submitted shall be incorporated by reference into and be considered part of the contract between the City/MPO and the firm selected.

Please submit eight (8) copies of the proposal and one sealed envelope with the firm's fee schedule and cost estimate to the Cheyenne MPO Office, Room 205, 2101 O'Neil Avenue, Cheyenne, not later than **3:00 PM on February 25, 2016**.

PROPOSAL FORMAT

The proposer shall use the following format when preparing his proposal:

1. Project Team - Identify the project team members and their positions in the team, briefly outlining the responsibilities of each member. The office of the project team members not located in Cheyenne should be identified. Include any anticipated sub-consultants within the project team.
2. Schedule - The anticipated time to perform the required work with respect to the availability of project personnel and present work load should be identified using the tasks outlined under the SCOPE OF WORK. Identify the team members and the percentage of time that they will dedicate to each task. A bar graph is suggested for this section. Additional tasks or duties not addressed in Exhibit "A" should be discussed in paragraph form, under Section 5, Other Information. Attention is directed to page C-1 of the proposed agreement, draft copy attached.
3. Project Area - The proposer should show briefly and concisely his familiarity with the project area. The proposer is expected to thoroughly review all data submitted and identify potential problems that may arise during data collection and collation.
4. Scope of Work - All proposers will commit at a minimum to the services outlined in Exhibit "A" of the proposed contract, draft copy attached. The proposer may supplement the draft Scope of Work with any additional work or clarification of work that is determined necessary for the successful completion of the project.
5. Other Information - Any additional information the proposer feels would be useful to the committee in evaluating the proposal should be placed in this section.

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6. Project Specific Information - The proposer should carefully review Exhibit A “Scope of Work” in the attached Professional Services Agreement (PSA). This exhibit provides background and other information as well as directions necessary for proposal preparation.

SELECTION PROCESS

Written proposals will be reviewed by a committee appointed by the City Engineer & MPO Director.

The City/MPO retains the right to reject any or all proposals in accordance with Wyoming Statute 15-1-113. The City also reserves the right to consider and rely upon factors other than pricing in its selection process. The City may award the project to the proposer who receives the most points on the selection sheet which is contained on page 4 of this Request for Proposal.

SELECTION CRITERIA

The successful proposal will be evaluated based upon the criteria on the attached sheet entitled **“PROJECT: Traffic Signal Turning Movement Counts” CRITERIA WEIGHTING**

For consideration, proposals shall contain all information requested, including a sealed envelope with the firms current fee schedule and cost estimate.

OTHER INFORMATION

Information in each proposal shall be considered public information by the City of Cheyenne. Any information considered to be trade secrets, privileged, or confidential by the responder should not be submitted with the proposal. Contents of the proposals received and completed weighting sheets will be made available to anyone requesting them, after the selection process has been completed and the contract awarded and executed.

SELECTION PROCESS TENTATIVE SCHEDULE

February 25, 2016	Proposals due from Consultants
February 29, 2016	Review committee completes final selection.
March 4, 2016	Professional Services Agreement finalized with successful Consultant
March 9, 2016	Agreement placed on City Council Agenda
March 14, 2016	City Council Meeting No.1: Agreement referred to Finance Committee

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March 21, 2016	Agreement discussed in Finance Committee.
March 28, 2016	City Council Meeting No. 2: Agreement approved/disapproved.
March 29, 2016	Notice-to-proceed issued by City if Agreement approved

PROJECT: Traffic Signal Turning Movement Counts
CRITERIA WEIGHTING

<u>CRITERIA</u>	<u>DESCRIPTION</u>	<u>WEIGHT</u>
Applicable experience	Quantity and type of experience with similar work	<u>2</u>
Approach to project	Methods of identifying, understanding and addressing project, including significant issues i.e.; Traffic, Public Information, Safety, etc.	<u>3</u>
Project innovations	Cost saving ideas proposed for the project.	<u>2</u>
Technical expertise	Expertise dealing with the technical issues important to the project.	<u>8</u>
Adequate resources	Sufficient available staff and equipment to complete the proposed work within the requested time frame.	<u>8</u>
Project innovations	Ideas or suggestions to improve the schedule, constructability, feasibility, or scope of the project.	<u>1</u>
Jobsite proximity	Physical location relative to project site in order to minimize response time to project needs.	<u>2</u>
Performance on past projects	Success on previous projects in the way of project deadlines, cost control, quality, innovative deadline driven design approaches used, public relations and general cooperative nature of the firm.	<u>9</u>
Familiarity with project	Knowledge of project background, needs, goals, limitations, and special considerations.	<u>1</u>
Proposal quality	Readability, completeness, brevity, and organization of the proposal.	<u>5</u>
Equal Opportunity.	Consultant's record on affirmative action and response to relevant policies regarding minorities, women and disadvantaged business in employment contracts.	<u>2</u>
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PROFESSIONAL SERVICES AGREEMENT

Project Name: **Traffic Signal Turning Movement Counts**

EXHIBIT "A"

SCOPE OF WORK

The scope of work for the **Traffic Signal Turning Movement Counts** is to perform extensive data collection for 123 signalized intersections plus five non-signalized intersections (128 total), to include seven (7) hours of turning movement counts at each intersection in the Cheyenne, Wyoming area. The counts may be performed manually in the field by technicians or automated using Video Collection Units (VCU). VCU technologies, if utilized must first be tested for accuracy.

Upon receipt of Notice to Proceed with this project, the Consultant shall proceed with the following tasks:

A.1 GENERAL CONDITIONS:

The following items are considered to be included as part of the basic compensation for this project:

- Normal business expenses - phone, postage
- Cost of insurance
- In-house computer time and service
- Word processing, accounting, and man-hour records
- Permits and license fees
- Mileage
- Travel fees, room and board, per diem
- Printing costs for all standard review, bidding, and as-constructed plans and other correspondence and contract documents
- Any changes in the Consultants or subconsultant's staff or fee structure shall be presented in writing to the City for approval prior to initiating any changes or performing any work.

A.2 Task 1 - DEVELOPMENT OF DESIGN DOCUMENTS CONSULTANT WILL:

1. Perform turning movement counts of all movements including four count classifications, passenger vehicles, heavy vehicles, pedestrians and bicyclists for the hours of 7:00 a.m. to 9:00 a.m.; 11:00 a.m. to 1:00 p.m.; and 3:00 p.m. to 6:00 p.m. (AM Peak, Noon Peak, and PM Peak) at all intersections. The turning movement data shall only be collected on Tuesdays, Wednesdays and Thursdays. The following 128 intersections in Cheyenne must be counted over an 8 week span in April and May before area schools are dismissed:

PROFESSIONAL SERVICES AGREEMENT

Project Name: **Traffic Signal Turning Movement Counts**

<u>Signal No.</u>	<u>E-W Street</u>	<u>N-S Street</u>
103	W. 19th St.	Capitol Ave.
104	W. 20th St.	Capitol Ave.
105	W. 17th St.	Carey Ave.
106	W. 18th St.	Carey Ave.
107	W. 19th St.	Carey Ave.
108	W. 20th St.	Carey Ave.
109	W. 24th St.	Carey Ave.
110	W. Pershing Blvd.	Carey Ave.
111	W. 17th St.	Pioneer Ave.
112	W. 18th St.	Pioneer Ave.
113	W. 19th St.	Pioneer Ave.
114	W. 20th St.	Pioneer Ave.
115	W. 24th St.	Pioneer Ave.
118	E. 19th St.	Evans Ave.
119	E. 20th St.	Evans Ave.
120	E. 24th St.	Evans Ave.
121	E. Pershing Blvd.	Evans Ave.
122	Nationway	Ridge Rd.
123	Nationway	Windmill Rd.
124	Dell Range Blvd.	Powderhouse Rd.
125	Dell Range Blvd.	Driftwood
127	Dell Range Blvd.	Converse Ave.
128	Dell Range Blvd.	Windmill Rd.
129	Dell Range Blvd.	Ridge Rd.
130	Prairie Ave.	Powderhouse Rd.
131	W. Pershing Blvd.	Snyder Ave.
132	E. Pershing Blvd.	Morrie Ave.
133	E. Pershing Blvd.	Logan Ave.
135	E. Pershing Blvd.	Henderson Dr.
136	E. Pershing Blvd.	Windmill Rd.
137	E. Pershing Blvd.	Forest Dr.
138	E. Pershing Blvd.	Rayor Ave.
139	E. Pershing Blvd.	Ridge Rd.
141	E. 19th St.	Morrie Ave.
142	E. 20th St.	Morrie Ave.
143	Nationway	Logan Ave.
144	E. 19th St.	Logan Ave.
145	E. 20th St.	Logan Ave.
147	Parsley Blvd.	Deming Dr.
148	Randall Ave.	Snyder Ave.
149	Dell Range Blvd.	Sunset Dr.
150	W. 25th St.	Carey Ave.
151	Dell Range Blvd.	Frontier Mall Dr.

PROFESSIONAL SERVICES AGREEMENT

Project Name: **Traffic Signal Turning Movement Counts**

152	Dell Range Blvd.	Prairie Ave.
153	W. 19th St.	Snyder Ave.
154	W. 20th St.	Snyder Ave.
155	Dell Range Blvd.	Yellowstone Rd.
156	Manewal Dr.	Yellowstone Rd.
157	Carlson St.	Yellowstone Rd.
158	Storey Blvd.	Yellowstone Rd.
160	Dell Range Blvd.	Wal-Mart
161	Dell Range Blvd.	Rue Terre
162	Prairie Ave.	Lowe's
163	Vandehei Ave.	Yellowstone Rd.
164	Campstool Rd.	Christensen Rd.
165	Airport Pkwy.	Converse Ave.
166	Missile Dr.	24th St. /Westland
167	Dell Range Blvd.	Stillwater Dr.
168	Storey Blvd.	Powderhouse Rd.
169	Storey Blvd.	Converse Ave.
170	E. Pershing Blvd.	Taft Ave.
171	E. 6 th St.	Logan Ave.
172	E. 5 th St.	Morrie Ave.
173	Dell Range Blvd.	Marble Ave.
174	Walterscheid Blvd.	Allison Rd.
175	Dell Range Blvd.	Moran Ave.
176	Campstool Rd.	Livingston Ave.
198	W. College Dr.	I-25 Ramp (NB)
199	W. College Dr.	I-25 Ramp (SB)
201	W. Lincolnway	Southwest Dr.
202	W. Lincolnway	Missile Dr.
203	W. Lincolnway	Ames Ave.
204	W. Lincolnway	Snyder Ave.
205	W. Lincolnway	Pioneer Ave.
206	W. Lincolnway	Carey Ave.
207	W. Lincolnway	Capitol Ave.
208	Lincolnway	Central Ave.
209	E. Lincolnway	Warren Ave.
210	E. Lincolnway	Evans Ave.
211	E. Lincolnway	Morrie Ave.
212	E. Lincolnway	Dunn Ave.
213	E. Lincolnway	Logan Ave.
214	E. Lincolnway	Converse Ave.
215	E. Lincolnway	Hot Springs Ave.
216	U.S. Hwy 30	Ridge Rd.
217	U.S. Hwy 30	N. College Dr.
218	U.S. Hwy 30	E. Pershing Blvd.
219	College Dr.	U.S. Hwy 85
220	Fox Farm	U.S. Hwy 85

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Project Name: **Traffic Signal Turning Movement Counts**

221	17th St	Central Ave
222	18th St	Central Ave
223	19th St	Central Ave
224	20th St	Central Ave
225	24th St	Central Ave
226	Pershing Blvd	Central Ave
227	8th Ave	Central Ave
228	Yellowstone Rd.	Central Ave
229	E. 17th St	Warren Ave
230	E. 18th St	Warren Ave
231	E. 19th St	Warren Ave
232	E. 20th St	Warren Ave
233	E. 24th St	Warren Ave
234	E. Pershing	Warren Ave
235	E. 8th Ave	Warren Ave
236	Randall Ave.	I-25 Ramp (SB)
237	Randall Ave.	I-25 Ramp (NB)
238	Allison Rd.	U.S. Hwy 85
239	Campstool Way	N. College Dr.
240	I-80 Ramp (EB)	I-180
241	I-80 Ramp (WB)	I-180
242	5th St	I-180
243	9th St	I-180
244	E. Pershing Blvd	N. College Dr.
245	Dell Range Blvd.	N. College Dr.
246	W. College Dr.	Walterscheid Blvd.
247	E. 12th St	N. College Dr
248	I-80 Ramp (EB)	N. College Dr
249	Central Ave	Walker Rd
250	25 th St.	Central Ave
251	Central Ave	I-25 Ramp (NB)
252	W. Lincolnway	Fleischli Pkwy
253	Williams Rd.	U.S. Hwy 85
254	E. Fox Farm Rd.	College Dr.

Other Intersections

<u>E-W Street</u>	<u>N-S Street</u>
Dell Range Blvd.	Grandview Ave.
Dell Range Blvd.	Mountain Rd.
Masonway	Converse Ave.
Point Bluff	Converse Ave.
Ogden Road	Converse Ave.

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The data is to be supplied to the City and WYDOT (three copies each) in an organized, bound volume as well as input into the provided Synchro 7 models for AM Peak, Noon Peak, and PM Peak. Provide electronic count files that can be exported directly into Synchro, Jamar PetraPro software or any software that requires turning movements as an input.

All traffic counts to be completed in April and May 2016 with the last day of collection on May 26 (The last day of school). The final data will be delivered to the City and WYDOT no later than Thursday, June 30, 2016. The Consultant shall have rigorous quality control procedures in place, apply quality assurance measures and verify accuracy of the traffic counts before data is submitted to the City and WYDOT.

Data collection should be conducted on good weather days. Snow which accumulates on the pavement and heavy rain should be avoided. A right-of-way permit shall be obtained from the City of Cheyenne (no-charge).

City Contract # _____

MPO Contract # 187432

(RFP 11-16)

PROFESSIONAL SERVICES AGREEMENT
for
Traffic Signal Turning Movement Counts

THIS AGREEMENT made and entered into this _____ day of March, 2016 by and between the Cheyenne Metropolitan Planning Organization, hereinafter referred to as the "MPO" and _____, hereinafter referred to as "Consultant." The City of Cheyenne is acting as the agent of the MPO for the contract administration and as the MPO's Fiscal Manager in accordance with Contract #6111.

RECITALS

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

1. SCOPE OF WORK

The Consultant agrees to provide services as described for the above mentioned project, in accordance with the Scope of Work attached hereto as Exhibit "A" incorporated by reference and expressly made a part hereof.

2. TIME OF PERFORMANCE

The work included in this scope of work will be completed in accordance with the project schedule attached as Exhibit "B". Any extensions of the time limit set forth in the Scope of Work shall be agreed upon in writing between the parties.

3. CONSULTANT RESPONSIBILITY

The Consultant shall be responsible for the professional quality, technical accuracy, timely completion of drawings and other services rendered by the Consultant and its sub-consultants and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies, except to the extent that such errors, omissions or other deficiencies arise from the digital data created by *Cheyenne/Laramie County Cooperative Geographic Information System (CLCCGIS)*.

In providing services under this Agreement, Olsson shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to Olsson and by mutual agreement between the parties, Olsson will, without additional compensation, correct those services not meeting such a standard.

4. GIS MAPS AND DIGITAL DATA

If the consultant uses any maps, coverages, images, or other digital data created by the CLCCGIS for the project specified in Exhibit A, the consultant agrees to return or destroy that information once the project is complete. Consultant agrees not to reuse or sell the GIS maps or data, which were provided as a professional courtesy and to minimize the cost of the project.

5. GIS DATA LIMITATION AND DISCLAIMED LIABILITY

GIS data is collected primarily for use by the City of Cheyenne and Laramie County. Any unauthorized use of the data is at the risk of the user. The CLCCGIS cannot vouch for any unauthorized use.

6. COMPLIANCE WITH LAWS

The Parties agree that they will perform their obligations as provided in this agreement in accordance with all applicable laws and ordinances.

7. DRUG-FREE WORKPLACE

In compliance with the Drug Free Work Place Act of November 1988, the City of Cheyenne has established an Alcohol and Controlled Substance Policy that pertains to alcohol and drug usage by City Employees. All architects, engineers and other consultants under contract with City of Cheyenne, and their employees and sub consultants, are required to comply with the provisions of the City's Alcohol and Controlled Substance Policy for drug and/or alcohol usage on City property or other sites occupied by the consultant while performing the duties and responsibilities of the contract. It is the responsibility of the consultant to familiarize themselves with the requirements of this policy and to inform all their employees and sub-Consultants of the requirements and ensure their compliance. If the consultant, their employees or sub-consultants are found in violation of this policy, the contract may be terminated.

8. INDEMNIFICATION / HOLD HARMLESS

The Consultant agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, claims, penalties, forfeitures and suits, and the cost and expenses incident thereto, including reasonable attorney's fees, which may hereafter arise as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders to the extent caused by (1) the Consultant's breach of any term or provision of this Agreement; or (2) any negligent or wrongful act, error or omission by the Consultant, or its employees or sub consultants in the performance of this Agreement. The Consultant acknowledges that it may incur a financial obligation to the City pursuant to the terms of this paragraph.

9. INSURANCE REQUIREMENTS

The Consultant must provide proof of the following insurance coverages:

Commercial General Liability Insurance

For claims arising out of bodily injury, illness or death, or from damage to or destruction of property of others, including loss or use thereof, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for the entire term of the contract.

Business Automobile Insurance

Including owned, non-owned and hired vehicles with minimum limits for bodily injury and property damage of \$1,000,000 per accident for the entire term of the Agreement.

Workers' Compensation

Workers' Compensation coverage shall be in effect for the entire term of the Agreement, as required by Wyoming law, for all employees or agents providing services under this Agreement. Consultant shall provide the City with proof of workers' compensation or employer's liability insurance coverage.

Professional Liability Insurance

The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance in an amount not less than \$500,000 to protect the City from any and all claims arising from the Consultant's negligence in the performance of duties under this Agreement. The City prefers that this liability insurance coverage be provided pursuant to an "occurrence" policy.

If this coverage is provided pursuant to a "claims made" policy:

- a. Consultant shall, concurrently with the execution of this Agreement, provide the City with a certificate of insurance demonstrating that such coverage is or shall be in effect at the time the Consultant begins the provision of services under this Agreement; and
- b. In the event the Consultant's services extend into a future policy period, the Consultant shall, prior to the policy expiration date, provide the City with a new certificate of insurance demonstrating that such coverage is or shall be in effect during all periods of time that Consultant will provide services under this Agreement; and
- c. Consultant shall maintain said "claims made" coverage for a period of five (5) years following the last date that Consultant has provided services under this Agreement; and
- d. In the event the Consultant or the insurer terminates "claims made" coverage prior to the expiration of the periods provided in subparagraphs (a.), (b.), or (c.) of this paragraph, the Consultant shall provide to the City advance written notification of the termination of said coverage and shall provide the City with an endorsement for an extended reporting period ("tail coverage") which shall be in effect for a period of time not less than five (5) years following the last date that Consultant has provided services under this Agreement.

Additional Insurance Information

The Consultant shall name the City of Cheyenne and the MPO as **an Additional Insured** by endorsement on its insurance policies, with the exception of worker's compensation and professional liability insurance, and shall provide the City with a copy of the endorsements.

Consultant shall provide the City with certificates of insurance acknowledging the above-stated coverages prior to beginning any work under this contract.

It is understood and agreed that these policies are primary and not contributory. All policies required under this contract shall be in effect for the duration of the contract. It shall be an affirmative obligation upon Consultant to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation or substantive change of any insurance coverage required by this contract, and failure to do so shall be construed to be a breach of this contract.

If requested by the City, the consultant shall provide the City with copies of insurance policies and/or policy endorsements listing the City of Cheyenne as an additional insured. The City's failure to request or review such policies, endorsements, or certificates shall not affect the City's rights or Consultant's obligation hereunder.

Any insurance company providing coverage under this agreement shall have a minimum A. M. Best rating of A- (excellent).

10. MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES 49 CFR Part 26

All parties to this Agreement assure that no person will be excluded from participation in, denied the benefits of, or otherwise discriminated against, in connection with the award and performance of this agreement on the grounds of age, race, color, disability, national origin or sex.

11. COMPENSATION

In consideration of the services to be performed pursuant to this Agreement, the Consultant will bill the MPO and the MPO agrees to pay Consultant according to the fee schedule given in the Exhibit "C", a total of \$158,922.55. Exhibit "C" which is attached to this Agreement, is incorporated by reference and expressly made a part hereof. The amounts of all such payments shall be based upon the Consultant's progress, verified by the MPO, in completing the work as described in Exhibits "A", "B", "C". Final payment shall be made following acceptance of the work by the MPO. Original quality reproductions of all designs, plans, reports, specifications, drawings and other services rendered by the Consultant shall become the sole property of the MPO and shall be delivered to the MPO, immediately upon their preparation. The MPO will waive any and all claims against Consultant based on reuse of these documents or materials for any other project not the subject of this Agreement or any unauthorized changes by the MPO or any third party under the MPO's direction. A portion of the payment may be held until any claims are resolved.

12. MPO REPRESENTATIVE

Prior to commencement of work, the MPO will designate in writing, an MPO Representative who shall make, within the scope of his/her authority, all necessary decisions regarding the project. All requests for contract interpretations, field orders,

contract modifications, change orders, and other clarification or instruction shall be directed to the MPO Representative.

13. MONTHLY REPORT

With every monthly billing, Consultant shall provide the MPO Representative with a written statement of the status of the work with respect to the Scope of Services, time sheets, and work schedule. Failure to provide the required monthly report will delay processing of any payment request until the report is submitted.

14. INDEPENDENT CONSULTANT

The Consultant shall function as an independent consultant for the purposes of this Agreement. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Consultant or its agents or employees to act as an agent or representative of or on behalf of the MPO or to incur any obligation of any kind on the behalf of the MPO.

15. TAXES

The Consultant agrees to pay all valid taxes, excises, license fees, permit fees, bills, debts and obligations incurred by in connection with its operations under this Agreement.

16. APPROVAL OF PLANS

The MPO's approval of drawings, designs, plans, specifications, reports, and incidental work or materials shall not in any way relieve the Consultant of responsibility for the technical accuracy of the work. The MPO's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any of the MPO's rights under this Agreement or any of its legal rights under statute or common law arising out of the performance of this Agreement.

17. DEFAULT

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

18. REMEDIES

In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to cure the default. In the event the default remains uncorrected, the non-defaulting party declaring default may elect to:

- a. Terminate the Agreement and seek damages, which damages shall not exceed the contract amount;
- b. Treat the agreement as continuing and require specific performance.

19. TERMINATION BY MPO

The MPO Representative may, without cause, by written notice within ten (10) days to the Consultant, terminate this contract in whole or in part at any time, for the MPO's

convenience. Upon receipt of such notice, the Consultant shall:

- a. Discontinue all services affected, and
- b. Deliver to the MPO Representative within five (5) days all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- c. In the event of termination for convenience, the MPO will pay the Consultant for accepted work done and expenses incurred to the date of termination. Such acceptance shall not be unreasonably withheld.

20. ADDITIONAL REMEDIES

In the event the Consultant fails to strictly perform in accordance with this Agreement, the MPO may elect to correct the deficiencies and charge the Consultant. In the event of default of any of the conditions by either party which shall require the party not in default to commence legal or equitable action against the defaulting party each party shall bear its own costs and expenses, including without limitation, attorneys' fees.

21. GOVERNING LAW, JURISDICTION and VENUE

The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

22. GOVERNMENTAL IMMUNITY

The State of Wyoming, and WYDOT, the City of Cheyenne, and Laramie County, along with their officials and employees, do not waive their governmental or sovereign immunity by entering into this Agreement, and the MPO does not waive governmental immunity, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the agreement, and each specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. §1-39-101 *et seq.*, and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be constructed as a waiver of governmental or sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental or sovereign immunity. The State of Wyoming, WYDOT, the City of Cheyenne, Laramie County, and the MPO reserves all immunities and defenses available under the Wyoming Governmental Claims Act, W.S. Stat. §1-39-101 *et. seq.*

23. ENVIRONMENTAL POLICY ACTS

The Consultant agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

24. HUMAN TRAFFICKING

As required by 22 U.S.C. 7104(g) and 2 C.F.R. Part 175, this Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:

- a. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
- b. Procures a commercial sex act during the period of time that the award is in effect; or
- c. Uses forced labor in the performance of the award or sub-awards under the award.

25. KICKBACKS

The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, Cheyenne MPO may, at its discretion, terminate this Agreement without liability to Cheyenne MPO, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

26. LIMITATIONS ON LOBBYING ACTIVITIES

By signing this Agreement, the Consultant certifies and agrees that, in accordance with Public Law 101-121, payments made from a federal grant shall not be utilized by the Consultant or its subconsultants in connection with lobbying Congressmen, or any other federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

27. MONITORING ACTIVITIES

The Cheyenne MPO shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its subconsultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the related work.

28. NON-DISCRIMINATION

The Consultant shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyoming Statute § 27-9-105 et seq.), the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy or qualifying disability in connection with the performance under this Agreement.

29. PROFESSIONAL REGISTRATION

The Consultant shall endorse, as required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming.

30. PUBLICITY

Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Consultant and related to the services and work to be performed under this Agreement, shall identify Cheyenne MPO, the Wyoming Department of Transportation (WYDOT) and/or Federal Highway Administration as the sponsoring agency and shall not be released without prior written approval of Cheyenne MPO and WYDOT.

31. SUSPENSION AND DEBARMENT

By signing this Agreement, the Consultant certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and CFR 44 Part 17, or are on the debarred vendors list at www.epls.gov. Further, the Consultant agrees to notify Cheyenne MPO by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this Agreement.

32. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:

No Obligation by the Federal Government.

- a. The Consultant acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the sub consultant who will be subject to its provisions.

33. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

- b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub Consultant who will be subject to the provisions.

35. FEDERAL CHANGES: 49 CFR Part 18

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (18) dated October, 2011) between consultant and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

36. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:
FTA Circular 4220.1F

Applicability: The incorporation of FTA terms applies to all contracts.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City of Cheyenne requests which would cause City of Cheyenne to be in violation of the FTA terms and conditions.

37. LOBBYING: 31 U.S.C. 1352 – 49 CFR Part 19 - 49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay an person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

38. ADA ACCESSIBILITY: 42 U.S.C. 1201 *et seq.*

Applicability: Facilities construction or renovation contracts.

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

39. PRIVACY ACT: 5 U.S.C. 552

Applicability: The Federal Privacy Act requirements flow down to each third party Consultant and their contracts at every tier.

The following requirements apply to the Consultant and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant understands that the requirements of the Privacy Act, including the civil and criminal penalties for violations of that Act, apply to those individuals involved, and that failure to comply with the terms of the privacy Act may result in termination of the underlying contract.
2. The Consultant also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

40. ENTIRETY OF AGREEMENT

This agreement consisting of 11 pages, and Exhibits “A”, “B”, and “C” consisting of 10, 1, and 1 pages respectively, and submitted proposal with negotiated changes, contains the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter. Time is of the essence hereof.

Notwithstanding the foregoing, the MPO Master Agreement (Contract #6111) is hereby incorporated into and made a part of this Agreement. This Agreement and the parties thereto shall be subject to the terms of the MPO Master Agreement, and in the event that

the terms of the MPO Master Agreement conflicts with the terms of this Agreement, the terms of the MPO Master Agreement shall control.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Attest:

Richard L. Kaysen,
Mayor of Cheyenne on behalf of the MPO

Carol Intlekofer, City Clerk

By: _____

Date: _____

Address

City

By: _____

Name

Date: _____

Exhibit A

Traffic Signal Turning Movement Counts

Scope of Work

Exhibit B – Traffic Signal Turning Movement Counts

BASIC COMPENSATION SCHEDULE

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
	Single Person Counts	\$ 0.00	\$ 0.00
	Two Person Counts	\$ 0.00	\$ 0.00
	VCU Counts	\$ 0.00	\$ 0.00
	2 VCU Counts	\$ 0.00	\$ 0.00
	Total		\$ 0.00

Exhibit C - Traffic Signal Turning Movement Counts

PROJECT SCHEDULE

Date	Schedule Item
March 29, 2016	Notice-to-Proceed Issued by City
May 26, 2016	All data collected
June 30, 2016	Final data delivered to City and WYDOT