Questions
MPO – Southeast Future Road Network Study

First Set of Questions:

1. What is the current status of the City's Comprehensive Plan?

2. Is work for current developers within the project limits considered to be a conflict of interest?

3. Can you confirm who will be a part of the selection committee?

4. What data will be available to selected consultant outside of publicly available data?
   a. i.e. GIS, TDM, Utilities, Easements, Etc.

5. How important / what types of multimodal transportation are you considering for this plan?
   a. Is it primarily for roadway network planning?

Answers:

1. The City of Cheyenne's Comprehensive Plan is currently under contract negotiation. The City of Cheyenne Planning Department and Laramie County Planning Department will coordinate with the selected consultant to identify current and future land use changes within the study area to support future growth planning and travel demand modeling.

2. No. Work for current developers within the project limits is not, by itself, considered a conflict of interest for this project.

3. The selection committee will consist of nine (9) members appointed by the Cheyenne MPO. The committee will include three (3) representatives from the Cheyenne MPO, two (2) representatives from the City of Cheyenne, two (2) representatives from Laramie County, and two (2) representatives from the Wyoming Department of Transportation (WYDOT).

4. The Cheyenne MPO anticipates providing available project-related information that may include:

   - Existing Cheyenne MPO Travel Demand Model files
   - Existing GIS data maintained by the Cheyenne MPO, City of Cheyenne, and Laramie County
   - Connect 2050 Metropolitan Transportation Plan
   - Transportation Improvement Program (TIP)

- Existing transportation studies (if available)
- Available City of Cheyenne and Laramie County planning documents (if available)
- Available roadway, traffic, and land use data
- Existing functional classification data
- Available traffic count data

Utility mapping, easement information, and other infrastructure data may be available from the Laramie County Assessor, utility providers, or other agencies, as available. The availability and completeness of these datasets cannot be guaranteed. Consultants should identify any additional data needs in their proposals.

5. Yes. The primary focus of this study is future roadway network planning to support growth, mobility, and freight movement. The consultant should also consider multimodal opportunities, including pedestrian, bicycle, and transit accommodations, where appropriate.

Second Set of Questions:

1. Could you expand on how much of the land use/growth assumptions to be analyzed in Task 3 have already been determined, versus what still may be in flux?

2. Could you possibly provide a sample contract for this project?

Answers:

1. Existing land use and known development information are available; however, future land use and growth assumptions continue to evolve due to ongoing development activity. The selected consultant will coordinate with the Cheyenne MPO, City of Cheyenne, Laramie County, WYDOT, and other stakeholders to refine future land use and growth assumptions for the study.

2. See Attached Professional Service Agreement Contract Sample.

City Contract # __________

MPO Contract # 241810

PROFESSIONAL SERVICES AGREEMENT
for
Project Name

PREAMBLE

THIS AGREEMENT is made and entered into this _____ day of ____________, 2026, by and between the City of Cheyenne, Cheyenne Metropolitan Planning Organization, hereinafter referred to as the "MPO", and Consultant Name., 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 # 6161 .

AGREEMENT

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 hereto as Exhibit B, incorporated by reference and expressly made a part hereof. Any extensions of the time limit set forth in the Scope of Work will be agreed upon in writing between the parties.

3. **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 a total cost not-to-exceed amount of one hundred ninety-nine thousand eight hundred forty-one dollars and 82 cents ($199,841.82), in accordance with the fee schedule provided in Exhibit C, which is attached to this Agreement, 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, and 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 to the extent the MPO has satisfied its payment obligations to the Consultant. A portion of the payment may be held until any claims are resolved.

4. **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, the Consultant 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. Upon notice to the Consultant and by mutual agreement between the parties, the Consultant will, without additional compensation, correct those services not meeting such a standard.

5. **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.

6. **GIS DATA LIMITATION AND DISCLAIMER OF 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.

7. **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.

8. **DRUG-FREE WORKPLACE.** In compliance with the Drug-Free Workplace 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 Agreement. 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 Agreement may be terminated.

9. **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 subconsultants 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.

10. **<u>INSURANCE REQUIREMENTS.</u>** 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 Agreement.

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;

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;

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 workers' 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 Agreement.

It is understood and agreed that these policies are primary and not contributory. All policies required under this Agreement shall be in effect for the duration of the Agreement. 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 Agreement, and failure to do so shall be construed to be a breach of this Agreement.

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).

11. **<u>MPO REPRESENTATIVE.</u>** 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.

12. **<u>MONTHLY REPORT.</u>** 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 Work, time sheets, and work schedule. Failure to provide the required monthly report will delay processing of any payment request until the report is submitted.

13. **<u>INDEPENDENT CONSULTANT.</u>** 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.

14. **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.

15. **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.

16. **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.

17. **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; or

   b. Treat the agreement as continuing and require specific performance.

18. **TERMINATION BY MPO.** The MPO Representative may, without cause, by written notice within ten (10) days to the Consultant, terminate this Agreement 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;
   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; and
   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.

19. **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, attorney's fees.

20. **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.

21. **GOVERNMENTAL IMMUNITY.** The State of Wyoming, the Wyoming Department of Transportation (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 reserve all immunities and defenses available under the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et. seq*.

22. **AMENDMENTS.** Either party may request changes in this Agreement. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

23. **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 Agreement 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; and

b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the 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.

24. **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; and

c. The Consultant agrees to include the above two clauses in each sub-contract 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.

25. **FEDERAL CHANGES.** Consultant shall at all times comply with 49 CFR Part 18 and 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 Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

26. **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.

27. **<u>PRIVACY ACT. 5 U.S.C. § 552</u>**

<u>Applicability</u>: 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:

a. 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; and

b. The Consultant also agrees to include these requirements in each sub-contract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

28. **<u>MISCELLANEOUS TERMS REQUIRED BY WYOMING DEPARTMENT OF TRANSPORTATION</u>**

The below General Provisions shall also apply to all subconsultants engaged by the Consultant:

a. **Administration of Federal Funds.** The Consultant agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 CFR Part 200, et seq.; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by WYDOT.

b. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed by all parties to this Agreement.

c. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

d. **Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of WYDOT.

e. **Assumption of Risk.** The Consultant shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. The Cheyenne MPO will notify the Consultant of any state or federal determination of noncompliance.

f. **Auditing and Accounting.** The Consultant shall make available to the Cheyenne MPO their accounting records for progress and post-performance audits when deemed necessary by the Cheyenne MPO.

g. **Availability of Funds.** Each payment obligation of the Cheyenne MPO is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for the continued performance of the Agreement, the Agreement may be terminated by the Cheyenne MPO at the end of the period for which the funds are available. The Cheyenne MPO shall notify the Consultant at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Cheyenne MPO in the event this provision is exercised, and the Cheyenne MPO shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

This provision shall not be construed to permit the Cheyenne MPO to terminate this Agreement to acquire similar services from another party.

h. **Breach of Agreement.** The Consultant agrees to provide all professional services as required by the terms, conditions, provisions, and obligations of this Agreement. Failure by the Consultant to perform as required by the terms, conditions, provisions, or obligations of this Agreement shall constitute a breach of agreement. The Cheyenne MPO will consider a Consultant's failure to perform as a material breach of agreement when it can be determined that the terms, conditions, provisions, or obligations of the Agreement cannot be completed and the Cheyenne MPO will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. A material breach may result in remedies as the Cheyenne MPO deems appropriate, which may include, but are not limited to:

1. Termination as provided in Section Z – Termination of Agreement;

2. Withholding monthly progress payments;

3. Assessing damages/sanctions;

4. Disqualifying the Consultant from future solicitations, and/or

5. Legal remedy.

i. **Certification for Limitations on Lobbying Activities.** This provision is applicable to all Agreements exceeding One Hundred Thousand dollars ($100,000.00). By signing this Agreement, the Consultant certifies and agrees that, to the best of their knowledge:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in Section H – Breach of Agreement.

j. **Compliance with Laws.** The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

k. **Conflicts of Interest.** The Consultant shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which results in a disadvantage to the Cheyenne MPO, or a disclosure which would adversely affect the interests of the Cheyenne MPO. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

A conflict of interest may be considered a material breach of this Agreement. A material breach under this section may result in remedies as provided in Section H – Breach of Agreement. In the event the Agreement is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to the Cheyenne MPO or its designee.

The Consultant shall disclose, in writing, any potential or actual conflict of interest to the Cheyenne MPO, including financial or other personal interests.

l. **Copyright License and Patent Rights.** The Consultant acknowledges that federal grantor, the State of Wyoming, and WYDOT reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Agreement; and (2) any rights of copyright to which the Consultant purchases ownership using funds awarded under this Agreement. The Consultant must consult with WYDOT regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.

m. **Determination of Allowable Costs.** The Consultant shall assure, prior to submittal of periodic progress payments, that all costs are in accordance with federal cost principals as provided in 48 CFR 31. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in Section H – Breach of Agreement.

n. **Disadvantaged Business Enterprise Assurance.** The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR 26 in all subconsultant contract documents.

Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in Section H – Breach of Agreement.

o. **Environmental Policy Acts.** The Consultant agrees all activities under this Agreement shall 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.

p. **Errors and Omissions.** The Consultant shall be responsible for assuring that professional services provided under this Agreement are accurate and without mistakes or omissions. The Consultant shall endeavor to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (Standard/Duty of Care). The Cheyenne MPO will notify the Consultant at the earliest possible time of the professional services which require corrective action and the Consultant, by mutual agreement with the Cheyenne MPO and without additional compensation, shall correct those services. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in Section H – Breach of Agreement.

q. **Federal Audit Requirements.** The Consultant agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars ($750,000.00) or more in federal funds during its fiscal year, it must undergo and organization-wide financial and compliance single audit. The Consultant agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 CFR Part 200, Subpart F. If findings are made which cover any part of this Agreement, the Consultant shall provide one (1) copy of the audit report to WYDOT and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to WYDOT's records.

r. **Human Trafficking.** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Contract may be terminated without penalty if a private entity that receives funds under this Contract:

1. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;

2. Procures a commercial sex act during the period of time that the award is in effect; or

3. Uses forced labor in the performance of the award or subawards under the award.

s. **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.

t. **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, the Cheyenne MPO may, at its discretion, terminate this Agreement without liability to the 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.

u. **Mandatory Disclosures.** The Consultant shall disclose, in a timely manner, in writing, to the Cheyenne MPO all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Failure to make required disclosures can result in remedies for non-compliance including suspension or debarment.

v. **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 the performance of the related work.

w. **No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, shall be paid by either party.

x. **Non-Supplanting Certification.** The Consultant hereby affirms that federal grant funds will be used to supplement existing funds and shall not replace (supplant) funds that have been appropriated for the same purpose. The Consultant should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Agreement.

y. **Nondiscrimination.** The Consultant shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 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, color, race, religion, national origin, or disability in connection with the performance under this Agreement.

z. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.

aa. **Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials and data of any kind resulting from performance of this Agreement are at all times the property of the Cheyenne MPO. Said documents and/or work products shall be delivered to the Cheyenne MPO upon suspension, termination or completion of the services by the Consultant.

bb. **Patent or Copyright Protection, and Rights in Data.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Consultant or its subconsultants shall violate any such restriction. The Consultant shall defend and indemnify the Cheyenne MPO for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.

Copyrighting or other exclusions placed on any documents or materials developed by the Consultant, its sublets, agents or assigns under this Agreement are prohibited.

Data produced, furnished, acquired or used in meeting the terms and conditions of this Agreement are available to the Cheyenne MPO, WYDOT and/or the federal funding agency with unlimited rights. Data means all recorded information, regardless of form, to include [illegible] technical – scientific or technical nature - and computer software information. It does not include information related to administration of the Agreement such as financial, cost or pricing, or management information. Unlimited rights means that the Cheyenne MPO, State or federal agency has the right to use, disclose, reproduce, and distribute the data in any manner and for any purpose, and to permit others to also have unlimited rights. Meanings and uses described in this General Provision are superseded and/or supplemented by 48 CFR 52.227-14.

cc. **Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement until this Agreement has been reduced to writing, approved as to form by the Office of the Attorney General, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. §9-2-1016(b)(iv).

dd. **Professional Registration.** The Consultant shall endorse, if 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.

ee. **Program Income.** The Consultant shall not deposit grant funds in an interest bearing account without prior approval of WYDOT. Any income attributable to the grant funds distributed under this Agreement must be used to increase the scope of the program or returned to WYDOT.

ff. **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 the Cheyenne MPO, WYDOT, and the Federal Highway Administration as the sponsoring agencies and shall not be released without prior written approval of the Cheyenne MPO.

gg. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

hh. **Suspension and Debarment.** By signing this Agreement, the Consultant certifies that neither it nor its principals/agents 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 the Executive Order 12549 (Debarment and Suspension), 2 CFR Part 180, or are on the disbarred, or otherwise ineligible, vendors list at www.sam.gov. Further, the Consultant agrees to notify the Cheyenne MPO by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in Section I – Breach of Agreement.

ii. **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.

jj. **Termination of Agreement.** The Cheyenne MPO may at any time, by written notice within ten (10) days, terminate all or part of the Agreement when the Cheyenne MPO determines that the Consultant has failed to perform as required by the terms, conditions, provisions, or obligations of the Agreement – Termination for Cause or Breach – or the Cheyenne MPO determines that termination is in the public's best interest – Termination on Public's Behalf/Convenience. In this event, compensation will be made to the Consultant based upon the progress of the work performed prior to termination. Work performed shall be defined as the deliverables specified in the Agreement and accepted by the Cheyenne MPO, and not the labor hours billed. The Cheyenne MPO will notify the Consultant, in writing, of Agreement termination. Upon receipt of such notice, the Consultant shall:

1. Discontinue all services affected;

2. 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; and,

3. 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.

kk. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

ll. **Title VI Assurances for Non-Discrimination.** The Consultant agrees to comply with the requirements of the nondiscrimination clauses as described in the U.S. Department of Transportation (DOT) Order 1050.2.

mm. **Non-Discrimination Clauses**. During the performance of this Agreement, the Consultant, for itself, its assigns and successors in interest, agrees as follows:

1. **<u>Compliance with Regulations</u>.** The Consultant shall comply with the Regulations of the Wyoming Department of Transportation relative to nondiscrimination (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

2. **<u>Non-discrimination</u>.** The Consultant, with regard to the work performed by him after award and prior to completion of the contract work, shall not discriminate on the grounds of sex, race, religion, color, national origin, age or disability (Executive Order No. 11375) in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate, either directly or indirectly,

in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in appendices "A", "B" and "C" of the Regulations.

3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiations, made by the Consultant for work to be performed under a subcontract, including procurement of materials or equipment, each potential subconsultant or supplier shall be notified by the Consultant of its obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of sex, race, religion, color, national origin, age or disability.

4. **Information and Reports.** The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined pertinent by the State, to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the State and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Non-compliance.** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it may deem appropriate, including but not limited to:

   a. withholding of payment to the Consultant under this Agreement until the Consultant complies; and/or,
   b. cancellation, termination or suspension of this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Consultant shall include the provisions of paragraphs 1 through 6 of Exhibit C in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto. The Consultant shall take such actions with respect to any subcontract or procurement as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a subconsultant or supplier as a result of such direction, the Consultant may request that the State enter into such litigation to protect the interests of the State. The Consultant may also request that the United States enter into such

litigation to protect the interests of the United States.

29. **ENTIRETY OF AGREEMENT.** This Agreement consisting of nineteen (19) pages, Exhibit A consisting of four (4) pages, Exhibit B consisting of one (1) page, and Exhibit C consisting of two (2) pages respectively, for a total of twenty-six (26) pages, and submitted proposal with negotiated changes, contain 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. Any timing extension shall be approved in writing by both parties.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cheyenne Metropolitan Planning Organization
2101 O'Neil Avenue
Cheyenne, WY 82001

By: ______________________________
Patrick J. Collins, Chairman
MPO Policy Committee

Date: ______________________________

City of Cheyenne
2101 O'Neil Avenue
Cheyenne, WY 82001

By: ______________________________
Patrick Collins, Mayor

Date: ______________________________

(SEAL)

Attest:______________________________
Kristina F. Jones, City Clerk

Consultant

By: ______________________________

Print Name: ______________________________

Date: ______________________________