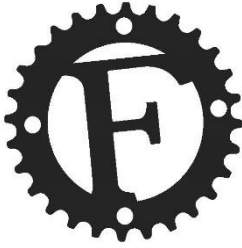


Exhibit B to Marketing and Promotions Contract with Barnhart Communications - RFP and Scope



City of Fruita Marketing and Promotion Request for Proposals

Introduction & General Background

The City of Fruita (the “City”) is requesting qualified companies or firms to submit responses to this Request for Proposal (“RFP”) seeking professional advertising and marketing services. All proposals shall be submitted and received no later than 3:00 PM (MST) on Friday, September 20th, 2024 (the “Submission Deadline”). Each qualified company or firm is hereafter referred to as an “Offeror” and all such qualified contractors are collectively hereafter referred to as “Offerors.” Proposals submitted by Offerors pursuant to this RFP are hereafter referred to as “Proposals” and each is referred to as a “Proposal.”

Electronic Proposals will be accepted through Bidnet Direct’s Rocky Mountain E-Purchasing System (“RMEPS”). <https://www.bidnetdirect.com/colorado>. (City does not have access to or control over the vendor side of RMEPS, and City makes no representation or warranty concerning the operability or accessibility of RMEPS. If website accessibility or operability or other problems with RMEPS arise during Proposal submission, the Offerors MUST contact Bidnet Direct to resolve the issue prior to the Submission Deadline. The Submission Deadline will not be changed or extended due to any issues or problems with Proposal submission, through RMEPS or otherwise. Should any such issues or problems arise, contact Bidnet Direct at 800-835-4603.) Proposals may also be emailed directly to MacKenzie Erickson, City Procurement and Contracts Specialist, at merickson@fruita.org.

The City of Fruita is a growing community with a population of approximately 14,000 in Western Colorado. It is well known for its outdoor recreation opportunities and is surrounded by over a million acres of public lands providing endless opportunities for mountain biking, hiking, trail running, road cycling, river rafting, and more. Fruita is also home to the Colorado National Monument, two state parks, Imondi Wake Zone (the only full-service cable wakeboard park in the Rocky Mountain West), and many unique special events. Fruita has been voted as the “Top Adventure Town” in Elevation Outdoors Magazine “Best of the Rockies” several times, and more recently, was named the “Best Kid Friendly Outdoor Town.”

Compliance

All Offerors agree and shall agree to comply with all conditions, requirements, and instructions of this RFP as stated herein or otherwise implied hereby. Should City omit anything from this RFP that is necessary to the clear understanding of the scope of services,

deliverables, or requirements set out herein, or should it appear that various instructions in this RFP are in conflict, an Offeror must secure instructions or clarifications from the City's Purchasing Division prior to the Submission Deadline. In no circumstance will the Submission Deadline be changed or extended due to omissions or conflicts herein.

Confidential Material

All materials submitted in response to this RFP shall ultimately become public record and shall be subject to inspection after contract award. "Proprietary or Confidential Information" is defined as any information that is not generally known to competitors and which provides a competitive advantage. Unrestricted disclosure of proprietary information places it in the public domain. Only submittal information clearly identified with the words "Confidential Disclosure" and uploaded as a separate document shall establish a confidential, proprietary relationship. Any material to be treated as confidential or proprietary in nature must include a justification for the request. The request shall be reviewed and either approved or denied by the City. If denied, the proposer shall have the opportunity to withdraw its entire proposal, or to remove the confidential or proprietary restrictions. Neither cost nor pricing information nor the total proposal shall be considered confidential or proprietary.

Proposal Ownership

All Proposals submitted pursuant to this RFP become the property of City upon receipt, and a Proposal shall only be returned to an Offeror at City's option. Selection or rejection of a Proposal shall not affect this right. City shall also have the right to use or appropriate all ideas or adaptations of ideas contained in any Proposal, subject only to the limitations outlined in Section 21 hereto (titled "Confidential and Proprietary Information"). Disqualification or rejection of a Proposal does not eliminate City's right of ownership therein.

Minimal Standards for Responsible Prospective Offerors

In submitting a Proposal, an Offeror must be able to demonstrate its ability to responsibly perform and comply with the scope of services, deliverables, requirements, and obligations set out in this RFP. Accordingly, in submitting a Proposal, an Offeror must demonstrate or establish that such Offeror:

- Has adequate financial resources, or the ability to obtain such financial resources, as necessary to responsibly perform the Project (defined below) or otherwise comply with the scope of services, deliverables, requirements, and obligations set out herein.
- Is able to comply with the required or proposed completion schedule of the Project (defined below).
- Has a record of performance that is satisfactory to City.
- Has a record of integrity and ethics that is satisfactory to City.
- Is otherwise qualified and eligible to have its Proposal be selected by City and enter into a contract with City for the construction and completion of the Project (defined below).

Nonconforming Terms and Conditions

A Proposal that includes terms and conditions that do not conform to all the terms and conditions, or any of them, required by or included in this RFP is subject to rejection by City as being non-responsive. City reserves the right to permit an Offeror to withdraw nonconforming terms and conditions from its Proposal prior to a determination by City of Proposal non-responsiveness based on the inclusion or submission of terms and conditions that are nonconforming with this RFP. Alternatively, in the event City rejects a Proposal for being non-responsive to this RFP, City may elect, in its sole discretion, to allow the Offeror of such rejected Proposal to submit a new Proposal that conforms to and satisfies all the terms and conditions required by and included in this RFP.

Open Records

All Offerors acknowledge and agree that all Proposals, and any of them, shall be open for public review and inspection after a Proposal is selected by City and a contract for the completion of the Project (defined below) is entered. Trade secrets and confidential information contained in a Proposal and so identified by the Offeror that submitted such Proposal shall be treated as confidential by the City to the extent allowed under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 – 24-72-206.

Sales Tax

Under relevant law, City is generally exempt from the Colorado sales tax and the federal excise tax; therefore, all fees defined in or related to this RFP or the Project (defined below) do not and shall not include or reflect taxes.

Questions and Addenda

Questions about this RFP or the Project will be accepted until Wednesday, September 11th, 2024, at 3:00 p.m. (MDT);

Addenda to this RFP, if any, will all be issued by Monday, September 16th, 2024, at 4:00 p.m.

RFP Questions:

MacKenzie Erickson, Procurement and Contracts Specialist
merickson@fruita.org

All questions, inquiries, comments, or communications pertaining to this RFP or any Proposal (whether regarding the Proposal preparation or submission process, Project (defined below) specifications or scope, or otherwise) must be directed (in writing) to merickson@fruita.org. Communicating directly with City's Project Manager (defined below) or engineers for the Project (defined below) is not appropriate during the public procurement and Proposal submission or review process, and doing so may result in disqualification of an Offeror or rejection of a Proposal.

Any interpretations, corrections, or changes to this RFP, or extensions of or changes to the Submission Deadline, shall be made by way of written addenda to the RFP drafted and adopted by City. Sole authority to authorize such addenda shall be vested in City's Purchasing Representative. Addenda to the RFP will be issued electronically through RMEPS (available at www.bidnetdirect.com/colorado) and on City's website, accessible at Fruita.org. **An Offeror must acknowledge receipt of all addenda to this RFP in its Proposal.**

City Oversight

The Assistant City Manager will be responsible for management of the Project on behalf of City (the "Project Manager"). City will provide reasonable assistance to the Offeror of the accepted Proposal in the scheduling of meetings, interpreting City's policy and procedural requirements that relate to or affect the Project (defined below), researching City's internal documents, and coordinating with outside agencies and City staff; provided, however City's foregoing commitments will not limit Offeror's requirements or obligations to complete the Project (defined below) or to complete and render the services and requirements set forth in this RFP and in all agreements between City and such Offeror regarding the Project. City will rely on the personnel, experience, and expertise of the Offeror of the accepted Proposal to ensure all necessary components of the Project (defined below) and the scope of services and requirements set forth in this RFP and in all agreements between City and such Offeror related to the Project are completed.

Scope of Services/Deliverables

The successful Offeror will be expected to complete the following scope of work, including but not limited to:

- a. Develop a strategic consumer marketing plan in coordination with other economic development efforts that includes identification of target markets; specific strategies with measurable objectives for each target market; and tactics to achieve those objectives.
- b. Administer GoFruita's Paid Marketing efforts on a monthly basis. Currently, GoFruita paid media includes the use of paid social media, Sojern, the Colorado Tourism Office, YouTube, and others.
- c. Analyze and recommend specific marketing mediums to include, but not limited to, print design, website content, billboards, videos, photos, etc. Monitor placement to ensure accuracy and completion of all media schedules.
- d. Develop strategies that maximize funds to establish an on-going marketing program. Program should identify potential marketing and advertising partners to develop tactics for generating new funding opportunities and leverage City of Fruita funds to extend a comprehensive marketing program.
- e. Develop a comprehensive reporting strategy that will inform the City of Fruita, in a timely manner, of the successes and failures of the marketing program and corrective action measures to address failures or intensify successes.

- f. Draft the bimonthly GoFruita newsletter with staff. Make presentations to staff, the Fruita Tourism Advisory Council, and the City Council.

The Offeror will provide all services necessary to successfully complete the project described above. Activities should include, but may not be limited to:

- a. Develop a marketing plan to promote recreation and sporting activities. The marketing plan will promote, but may not be limited to:
 - i. Natural resources for mountain biking, hiking, rafting, backpacking, 4-wheeling, rodeo, hunting, fishing, horseback riding, and wildlife viewing.
 - ii. Fruita's festivals, specifically "Fruita Fat Tire Festival", "Mike the Headless Chicken Festival", and "Fruita Fall Festival". Festivals will be promoted collectively and individually.
 - iii. World-renowned paleontology sites within the Fruita area, specifically: Dinosaur Hill, Rabbit Valley, Riggs Hill and the Fruita Paleo Area. The plan will include the nationally designated Dinosaur Diamond Prehistoric Byway.
 - iv. Federal lands with abundant outdoor recreational activities including the Colorado National Monument, a unit of the National Park Service with over 23,000 acres and over 40 miles of biking trails; and McInnis Canyons National Conservation Area with 123,400 high-desert acres including Rattlesnake Canyon, which includes the second largest concentration of natural arches in North America.
 - v. Family- friendly destinations including Dinosaur Journey, a unit of the Museum of Western Colorado, and the Riverfront Trail.
 - vi. The friendly destinations include Dinosaur Journey, a unit of the Museum of Western Colorado, and the Riverfront Trail.
- b. The marketing plan will specify the following issues and provide a cost estimate where appropriate:
 - i. Where marketing efforts will occur
 - ii. What will be marketed
 - iii. Identified target market(s)
 - iv. Timing strategies
 - v. Available resources
- c. Develop a strategy to utilize free advertising, sponsorships, and media partnerships. May also leverage local talent.

Required Submittals and Proposal

Interested companies or firms shall submit proposals that clearly demonstrate their ability to provide services as outlined above. Submittals shall be organized in the order listed below to facilitate fair and equitable evaluation of the responses. An electronic copy of the proposal shall be submitted and include:

- i. **Cover Letter** – A letter of interest expressing Offeror’s interest in the Project. Include in the letter of interest a statement regarding Offeror’s time and ability to commit key personnel to the Project during the period of Project construction and installation. The letter of interest should also include the name, address, and phone number of the person who will be authorized to make a presentation to City concerning the Proposal on behalf of Offeror.
- ii. **Company Qualifications, Relevant Project Experience & References** – A summary of previous work completed by Offeror and similar to the Project. The summary should include at least three (3) specific examples of relevant project experience in Colorado. The summary should also include the dates of completion of such prior, similar projects and the deliverables achieved for such prior projects. In addition to a summary, include a list with a minimum of three (3) references including email addresses, phone numbers, and physical addresses for all such references.
- iii. **Staff Team and Organization** – A brief overview of Offeror’s key personnel who will be devoted to work on the Project. Include respective job titles, timelines of employment with Offeror, and experience with projects similar to the Project.
- iv. **Scope of Services & Deliverables** – A proposed scope of services and deliverables for the Project as defined and described in this RFP. Include an estimated timeline for completion of the Project.
- v. **Cost of Services** – An itemized list of costs for the work, requirements, and obligations listed or contemplated in the Scope of Services/Deliverables section of this RFP.
- vi. **Solicitation Response Form** – A completed and signed copy of the Solicitation Response Form found at the end of this RFP.

Method of Evaluation, Limitation and Award

Proposals will be evaluated by City in accordance with the criteria and procedures outlined herein. The following parameters will be used to evaluate Proposals (with the weighted values noted below): the rating scale applied to each of the following qualifications and standards shall be from one (1) to three (3), with one (1) being a poor rating, two (2) being an average rating, and three (3) being an outstanding rating.

Weighting Values	Qualifications	Standard
30%	Scope of Proposal	Does the Proposal address all elements of this RFP? Does the Proposal show an understanding of the Project objectives, the methodology to be used in completing the Project, and the results/outcomes desired for the Project?
30%	Offeror Capability and Reputation	Does the Offeror have the resources, capacity, and support required to complete the Project

		in its entirety? Does the Offeror have a good safety record and sufficient qualifications?
20%	Cost	Does the Project's estimated cost as identified in the Proposal compare favorably with the Project cost estimates of the City's Project Manager's and other Proposals?
20%	Schedule	Are there any exceptions to the schedule outlined in this RFP for completion of all phases of Project work?

City may undertake negotiations with the Offeror that submits the top-rated Proposal based on the evaluation criteria and factors in this RFP, and City will not negotiate with Offerors of lower-rated Proposals unless negotiations with Offerors of higher-rated Proposals are unsuccessful and terminated. City reserves the right to reject any and all Proposals.

Method of Evaluation

A committee designated by City (the "Evaluation Committee") will select a Proposal and Offeror using a three-step process more fully explained below. The Evaluation Committee will be comprised of members of the Fruita Tourism Advisory Council.

First Step: Evaluation and Short List Selection

The Evaluation Committee will initially review and select Proposals based on the following criteria reflecting and incorporating the foregoing qualifications and standards:

- Experience and qualifications of Offeror;
- Ability of Offeror to perform Project work in the timeline and schedule outlined in this RFP;
- Cost or bid for the Project work to be performed; and
- Offeror references.

The Evaluation Committee shall rank all Offerors and their corresponding Proposals based on the information provided in the respective Proposals and any additional or follow-up information requested of Offerors and provided to the Evaluation Committee. Following such ranking, a list of no more than five qualifying Offerors will be created (the "Offeror List").

Second Step: Interviews/Presentations from Selected Firms

The Evaluation Committee shall conduct interviews with, and review presentations by, two or more Offerors concerning their respective Proposals as part of the Evaluation Committee's Proposal evaluation process.

Third Step: Retention

The Evaluation Committee will make a recommendation to the staff of the City and the City

Council. One Offeror will be selected from the Offeror List (as City may revise or change the same), and any revisions to the scope of Project work will be discussed with such selected Offeror along with Project cost modifications

Limitation and Award

This RFP does not commit City to enter or grant a contract to complete the Project to any Offeror, and this RFP does not obligate City to pay any costs incurred by an Offeror in the preparation and submission of a Proposal. City reserves the right to cancel or change this RFP at any time.

Proposed Timeline and Contract

RFP Issued	August 19, 2024
Deadline for Questions	September 11, 2024, at 3:00 PM
Addenda Posted	September 16, 2024, by 4:00 PM
Proposal Submission Deadline	September 20, 2024, at 3:00 PM
Committee Review	September 26, 2024
Interviews (Tentative)	October 10, 2024
Final Selection	October 24, 2024
Contract Signed	November 2024 to December 2024
Work Begins	January 2025

GENERAL CONTRACT TERMS AND CONDITIONS

1. Acceptance of RFP Terms

A Proposal submitted in response to this RFP shall constitute a binding offer by the submitting Offeror. Acknowledgment of this condition must be indicated in such Proposal's Artist Resume or Statement, and the acknowledgement must be given by an officer or employee of the submitting Offeror legally authorized to execute contracts on behalf of such Offeror. A Proposal submitted in response to this RFP shall constitute acceptance by the submitting Offeror of all terms and conditions set forth herein. An Offeror must identify clearly and conspicuously in its Proposal any variations between such Proposal and the City's requirements in this RFP. Failure to identify such variations in a Proposal shall be deemed a waiver by the submitting Offeror of any right to subsequently modify the terms of performance specified in the Proposal or set out in this RFP, except as otherwise outlined or specified herein.

2. Execution, Correlation, Intent, and Interpretations

Contract documents for the Project shall be signed by City and the Offeror that submits that Proposal ultimately selected by the City and Evaluation Committee for completion of the Project (together, the "Project Contract"). By executing the Project Contract, such Offeror (in the capacity of Offeror of the accepted Proposal, and as party to the Project Contract, hereinafter the "Contractor") shall represent and warrant that it has familiarized itself with

the local conditions under which the Project work is to be performed and correlated their observations of such local conditions with the requirements of the Project Contract. All documents that comprise the Project Contract are complementary, and what is required by any party to the Project Contract shall be binding as if required by or imposed on all parties thereto. The intention of and with the Project Contract is to include and cover all labor, materials, equipment, services, and other items necessary for the proper execution and completion of the Project as defined and contemplated in this RFP and any documents, drawings, and specifications related or attached hereto or incorporated or referred to herein. All documents, drawings, and specifications furnished by City for, under, or in relation to this RFP and the Project are and shall remain City property. Such documents, drawings, and specifications are not to be used on any project or undertaking except for the Project.

3. Assignment

No Offeror shall sell, assign, transfer, or convey its Proposal, and Contractor shall not sell, assign, transfer, or convey the Project Contract or any other document, drawing, or specification arising under, relating to, or resulting from the Project Contract or this RFP, in whole or in part, without the prior written approval of City

4. Compliance with Laws

All Proposals, and the Project Contract, must comply with all federal, state, county, and local laws that govern or relate to this RFP, the Project Contract, or the Project, and all the foregoing, and the Proposals and the Project Contract must satisfy all Americans with Disabilities Act (“ADA”) requirements. By submitting a Proposal and entering the Project Contract, Contractor warrants that it is qualified to assume the responsibilities and render the services described in this RFP and the Project Contract, that Contractor has all requisite corporate authority and professional licenses necessary to enter the Project Contract and complete the Project, and that Contractor is in good standing and authorized to conduct business in the State of Colorado as required by law.

5. Disbarment/Suspension

Contractor, by submitting a Proposal and entering the Project Contract, certifies and warrants and shall certify and warrant that Contractor is not presently disbarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by or with any government department or agency.

6. Conflict of Interest

No public official or City employee shall have a personal or proprietary interest in the Project Contract, this RFP, any Proposal, or any contract or agreement arising under or resulting from this RFP.

7. Contract

This RFP, and any and all documents and agreements related hereto or submitted herewith, and any negotiations related to any of the foregoing, when properly accepted by City, shall constitute a contract equally binding by and between City and an Offeror. The foregoing

shall represent the entire and integrated agreement between City and an Offeror regarding this RFP; provided, however, the Project Contract, and all document and agreements related thereto or arising thereunder, shall supersede all prior negotiations, representations, or agreements, either written or oral, regarding the Project, including Contractor's Proposal. Notwithstanding the foregoing, the Project Contract, and the documents and agreements related thereto or arising thereunder, may collectively or individually be amended or modified with or by way of change orders, field orders, or amendments executed or otherwise approved by City.

8. Cancellation of Solicitation

Any Proposal may be canceled or rejected in whole or in part by City, and City may also reject or refuse, in whole or in part, any response given by an Offeror pursuant to a request for information or clarification by City concerning a Proposal. City may exercise the foregoing rights, and any of them, as and when deemed necessary or prudent by City in its sole discretion.

9. Contract Termination

The Project Contract shall remain in effect until the earlier of any of the following: (1) the Project Contract expires by its terms; (2) City and Contractor enter into one or more new or replacement contracts that supersede the Project Contract; (3) acceptance by City of all Project work; or (4) the Project Contract is terminated by City or by Contractor, in accordance with the terms of the Project Contract, by way of a written notice of cancellation or similarly styled notice that states the reasons for such cancellation and the effective date of cancellation, which date must be at least thirty days after such notice of cancellation is provided or submitted to the non-terminating party.

10. Employment Discrimination

By submitting a Proposal and entering the Project Contract, Contractor agrees, at all times the Project Contract is in effect or otherwise outstanding or Project work is ongoing, to all the following conditions:

Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of Contractor.

Contractor shall post in conspicuous places, visible to Contractor's employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that such Contractor is an Equal Opportunity Employer.

Notices, advertisements, and solicitations placed by Contractor in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the foregoing requirements of this RFP.

11. Ethics

Contractor shall not accept or offer gifts or anything of value from, nor enter into any business arrangement with, any employee, official, or agent of City.

12. Failure to Deliver

If Contractor fails to deliver services in accordance with the terms and conditions of this RFP and the Project Contract, City, after due oral or written notice to Contractor, may procure such services from other sources and hold Contractor responsible for any costs resulting from additional purchase and administrative services related thereto. This remedy shall be in addition to any other remedies that City may have hereunder or under the Project Contract.

13. Indemnification

Contractor shall defend, indemnify, and save harmless City and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, and claims of any character, type, name, nature, or description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of Contractor, or of any of Contractor's agents, employees, subcontractors, or suppliers, in the execution of, or performance under, the Project Contract or any agreements or documents related thereto or arising thereunder or in relation to the Project. Contractor shall pay any judgment, with costs, which may be obtained against City based upon such injuries or damages.

14. Oral Statements

No oral statement of any Offeror or any other person shall modify or otherwise affect the terms, conditions, or specifications stated in this RFP, and no oral statement of Contractor or any other person shall modify or otherwise affect the terms, conditions, or specifications of the Project Contract. All modifications to this RFP and the Project Contract, or either of them, must be made or agreed to by City in writing.

15. Expenses

Expenses incurred in the preparation, submission, and presentation of a Proposal, or any of the foregoing, are the sole responsibility of the submitting Offeror and cannot and shall not be charged to City.

16. Public Funds/Non-Appropriation of Funds

Funds for the payment of the Project have been provided through City's budget approved by its City Council for the current fiscal year only. The Taxpayers' Bill of Rights ("TABOR") in Article X, Section 20 to the Colorado Constitution prohibits the obligation and expenditure of public funds by City beyond the fiscal year for which a budget has been approved. Therefore,

anticipated orders or other obligations that may arise, under the Project Contract or otherwise, past the end of the City's current fiscal year shall be subject to further budget approval. The Project Contract must and will be subject to, and must contain, a governmental non-appropriation of funds clause. Contractor, by entering the Project Contract, agrees and acknowledges and shall agree and acknowledge that any failure by City to fund Project obligations as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action against City whatsoever.

17. Collusion Clause

Each Offeror, by submitting a Proposal, certifies and shall by such submission certify that it is not a party to any collusive action or any action that is or may be a violation of the federal Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1-38, as amended (the "Sherman Act") Any and all Proposals shall be rejected if there is evidence or reason for City to believe that collusion exists among the Offerors, and any of them, in submitting Proposals or if Offerors have violated or may be violating the Sherman Act in submitted Proposals. City may or may not, as determined by City's Purchasing Representative in such Purchasing Representative's sole discretion, accept future proposals for the same service or commodities from Offerors that participate in any collusion or violation of the Sherman Act in contravention hereto.

18. Gratuities

Each Offeror, by submitting a Proposal, warrants and certifies, and shall by such submission warrant and certify, that no gratuities or kickbacks were paid in connection with this RFP or the submission of such Proposal, nor were any fees, commissions, gifts, or other considerations made contingent upon selecting a Proposal or entering the Project Contract. If an Offeror breaches or violates this warranty, City may, at its discretion, terminate this RFP or the Project Contract, and both of them, without liability to City.

19. Performance of the Contract

In the event of a breach or default of the Project Contract by Contractor, City reserves the right to enforce the performance of the Project Contract in any manner prescribed by law or otherwise allowed under the terms of the Project Contract.

21. Public Disclosure Record

If Contractor has knowledge its employee(s), or the sub-contractor(s) retained by or relied upon by Contractor, has an immediate family relationship with a City employee or elected official, Contractor must provide City's Purchasing Representative with the name(s) of such employee(s) or sub-contractor(s). Such identified employee(s) and sub-contractor(s) must file a public disclosure record, acceptable to City in its sole discretion, and a statement of financial interest before Contractor may conduct business with or for City.

22. Confidential and Proprietary Information

All Proposals, and all materials submitted hereunder or otherwise in response to this RFP, shall ultimately become public record and shall be subject to inspection following selection of Contractor and the entering of the Project Contract. As used herein, "proprietary information" shall mean any information about an Offeror that is not generally known to its

competitors or the public and that may provide a competitive advantage exercisable against such Offeror. Unrestricted disclosure of proprietary information, in a Proposal or otherwise, places it in the public domain. Only information included in a Proposal and clearly identified with the designation "Confidential Disclosure," and uploaded as a separate document from the remainder of a Proposal, shall be considered for treatment by City as proprietary information. A Proposal that includes material designated by the submitting Offeror as proprietary information by way of a Confidential Disclosure designation must include a justification or explanation of why the designated material constitutes proprietary information. The designation and request for treatment as proprietary information shall be reviewed and either approved or denied by City. If a designation and request is denied by City, the Offeror that submitted the Proposal shall have the opportunity to withdraw its entire Proposal or to remove the information in the Proposal designated for Confidential Disclosure. In no circumstance shall Project cost or pricing information be considered proprietary information. Additionally, a total Proposal shall not under any circumstance constitute proprietary information. Any Proposal and information submitted to the City is subject to disclosure pursuant to CORA.

23. Withdrawal or Modifications of Offers

An Offeror may, by way of a writing submitted to City, modify or withdraw a Proposal at any time prior to the Submission Deadline.

24. Acceptance

Any Proposal received by City and not withdrawn by the submitting Offeror prior to the Submission Deadline is and shall be considered an offer by such Offeror, which offer may be accepted by City based on the Proposal without further discussion or negotiation. By submitting a Proposal in response to this RFP, an Offeror agrees its Proposal may be accepted by City at any time within ninety (90) calendar days from the date of the Submission Deadline. City reserves the right to: (a) reject any or all Proposals, (b) waive informalities and minor irregularities in Proposals received, and/or (c) accept any portion of a Proposal if deemed by City, in its sole discretion, to be in City's best interest. Failure of an Offeror to provide in its Proposal any information requested in or required by this RFP may result in rejection of all or any of such Proposal for non-responsiveness.

25. Proposal Preparation Cost

The costs incurred by an Offeror in preparing or submitting a Proposal, including without limitation as to securing any bid bond, are not reimbursable costs, and City shall have no responsibility or obligation to pay or reimburse an Offeror for such costs. Proposal preparation and presentation shall be undertaken at an Offeror's sole expense and is such Offeror's total and sole responsibility.

26. Award

The Evaluation Committee will make an Offeror List, and City will ultimately select Contractor, by applying the evaluation criteria and factors listed in this RFP to the Proposals so as to ascertain the Project best value as determined by City in its sole discretion. As used herein,

"best value" means the expected outcome that, in the City's sole estimation, provides the greatest overall benefit in relation to the Project and the requirements detailed in this RFP. City reserves the right to reject any or all Proposals, to not enter the Project Contract, and to otherwise not proceed with the Project.

27. Substantive Proposals

By submitting a Proposal in response to this RFP, an Offeror certifies: (a) its Proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) it has not directly or indirectly induced or solicited any other Offerors to put in a false or sham Proposal; (c) it has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing or submitting a Proposal; (d) it has not sought by collusion to obtain for itself any advantage over any other Offerors or over City; and (e) it has not violated or caused any person to violate, and shall not violate or cause any person to violate, City's Code of Ethics contained in Chapter 2.70 of the City's Municipal Code. By entering the Project Contract, Contractor shall thereby again make the foregoing certifications.

28. Non-Colorado Entities

Before entering the Project Contract, Contractor must comply with C.R.S. §§ 7-90-801 ("Authority to transact business or conduct activities required") and 7-90- 802 ("Consequences of transacting business or conducting activities without authority"). Should Contractor be an entity organized under the laws of a foreign state other than the State of Colorado, or should Contractor otherwise be operating outside the State of Colorado, Contractor must, before entering the Project Contract, obtain authorization to do business in the State of Colorado, designate a place of business in the State of Colorado, and appoint an agent in the State of Colorado for service of process. In all circumstances, Contractor must furnish City with a certificate from the Colorado Secretary of State confirming Contractor's current authority to conduct business in the State of Colorado. Contractor shall also provide to City a certified copy of the designation of place of business and appointment of agent for service of process in Colorado from the Colorado Secretary of State, or a letter from the Colorado Secretary of State stating such designation of place of business and agent for service of process has been made.

29. Insurance

Contractor agrees to procure and maintain, at its own cost, the following policy, or policies of insurance upon or prior to entering the Project Contract. Contractor shall not be relieved of any liabilities, claims, demands, or other obligations assumed pursuant to the Project Contract by reason of Contractor's failure to procure or maintain any such policy or policies, or by reason of Contractor's failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain, and Contractor shall cause each subcontractor hired or retained by Contractor for the Project to procure and maintain, or Contractor shall

alternatively ensure the activities of its subcontractors under Contractor's own policies for, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City in its sole discretion. All coverages shall be continuously maintained from the date of commencement of services under this RFP or the Project Contract as City may elect. In the case of any claims-make policy, Contractor shall procure the retroactive dates and extended reporting periods necessary to maintain continuous coverage.

Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Project work under this RFP or the Project Contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,00) disease - each employee.

Comprehensive General Liability insurance with minimum combined single limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate. Such policy shall be applicable to all premises and all operations of Contractor. Additionally, such policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for both contractual and employee acts), blanket contractual, independent contractors, products, and completed operations, and any other coverage reasonably required by City. Such policy shall also contain a severability of interests provision.

Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate with respect to each of Contractor's owned, hired, and/or non-owned vehicles assigned to or used in performance of Project work. The policy shall contain a severability of interests provision.

30. Colorado Governmental Immunity Act

Nothing in this RFP, and nothing in the Project Contract, shall constitute a waiver by City of any provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-101 – 24-10-119, as may be amended from time to time. In all circumstances, the CGIA and its limits shall apply to this RFP, the Project Contract, and the Project, and all work related to any of the foregoing.

Solicitation Response Form

Bid Date: _____

RFP: _____

Bidding Company: _____

Name of Authorized Agent _____

Email _____

Telephone _____ Address _____

City _____ State _____ Zip _____

The undersigned Offeror, in compliance with the RFP and having examined the Instruction to Bidders, General Contract Conditions, Statement of Work, Specifications, and other portions of the RFP, as well as any and all Addenda to the RFP, and having investigated the location of, and conditions affecting, the proposed Project work, hereby proposes to furnish all labor, materials and supplies, and to perform all work, for the Project in accordance with Project Contract, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the Project work required under the Project Contract, of which the RFP and this Solicitation Response Form are a part.

The undersigned Offeror does hereby declare and stipulate that its Proposal is made in good faith without collusion or connection to any other Offerors and that its Proposal is made pursuant and subject to all terms and conditions of the RFP and any Addenda thereto, all of which have been examined by the undersigned Offeror. The undersigned Offeror also agrees, if awarded the Project Contract, to provide insurance certificates within ten (10) working days of the date of notification of award from City. Submission of this form with the undersigned Offeror's Proposal will be taken by City as a binding covenant that Offeror is and will be prepared to complete the Project in its entirety.

City reserves the right to select a Contractor on the basis of such Contractor's Proposal being deemed most favorable, to waive any formalities or technicalities, and to reject any or all Proposals or other offers. It is further agreed that this form may not be withdrawn by an Offeror for a period of sixty (60) calendar days after the Submission Deadline. Closing time. Submission by Offerors of clarifications and revised Proposals automatically establish a new thirty-day (30) non-withdrawal period.

Prices in the undersigned Offeror's Proposal have not knowingly been disclosed with another Offeror and will not be disclosed prior to selection of an Offeror by City as Contractor.

- Prices in this Proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition between Offerors.
- No attempt has been or will be made to induce any other Offeror, whether person or firm, to submit a Proposal for the purpose of restricting competition.
- The individual signing this Proposal on behalf of Offeror certifies they are a legal agent of the Offeror, authorized to represent the Offeror, and is legally responsible for the Proposal with regard to supporting documentation and prices provided.
- Direct purchases by City are tax exempt from Colorado sales or use taxes (Tax exempt No. 98-903544). The undersigned Offeror certifies that no federal, state, county, or municipal tax will be added to the quoted prices in the Proposal.
- City payment terms for the Project Contract shall be Net 30 days.

RECEIPT OF ADDENDA: the undersigned Offeror acknowledges receipt of Addenda to the RFP.

State number of Addenda received: _____.

It is the responsibility of Offeror to ensure all Addenda have been received and acknowledged. By signing below, the undersigned Offeror agrees to comply with all terms and conditions contained herein.

Authorized Signature: _____ Title: _____