

PROPOSAL RESPONSE COVER SHEET



REQUEST FOR PROPOSALS

**Project No. 09-059
LEAD BASED PAINT RISK ASSESSOR WITH XRF INSPECTION SERVICES**

The undersigned, having carefully read and considered the Request for Proposals for the above referenced project does hereby offer to perform such services on behalf of the City of Pueblo in the manner described and subject to the terms and conditions set forth in the attached RFP. Services will be performed at the rates set forth in submitted proposal or as negotiated by all involved parties.

In submitting this Proposal, it is understood that the City of Pueblo reserves the right to reject any and all Proposals, and to waive any informalities in Proposals as submitted. Proposer acknowledges that their firm is qualified in this area of work and has experienced personnel able to provide the required services. The City may request information substantiating the indicated requirements. Failure to provide this information may result in a vendor's Proposal being declared non-responsive. It is the Proposer's responsibility to verify if any addenda were issued prior to submission of their bid.

Proposer acknowledges and accepts that all components of and responses to this RFP will be included and become a part of the final contract by reference.

The undersigned further states that this Proposal is made in good faith and is not founded on, or in consequence of, any collusion, agreement or understanding between themselves or any other interested party.

(All contact information must be filled out and form submitted with proposal)

PROPOSER (full lawful name; if other than a natural person, include state of formation):

Name of Person with Authority to Bind Proposer: _____

BY (Title of Person with Authority to Bind Proposer): _____

ADDRESS (Office & PO Box) _____

PHONE _____ FAX _____

FEDERAL TAX I.D. (or Social Security # if individual) _____

If other than a natural person, Proposer must attach a Certificate of Good Standing from the state wherein Proposer was organized.

GENERAL INFORMATION

Project No. 09-059 LEAD BASED PAINT RISK ASSESSOR WITH XRF INSPECTION SERVICES

I. GENERAL INFORMATION

The City of Pueblo (the "City") is soliciting qualification-based proposals to provide professional lead-based paint XRF inspection and sampling services in single-family and multi-family dwellings within the City of Pueblo. **Proposals will be received up to the hour of 11:00 AM (MT) on Thursday, July 2, 2009** at the City's Purchasing Office, 230 South Mechanic Street, Pueblo, Colorado 81003.

II. BACKGROUND / OBJECTIVE

The city anticipates receiving direct or indirect federal funding under the "Neighborhood Stabilization Program" (NSP) authorized by the Housing and Economic Recovery Act of 2008 (P.L 110-289). The purpose of the NSP is the stabilization of neighborhoods through the purchase, rehabilitation and disposition of foreclosed or abandoned and blighted properties, and purchase of vacant urban land for re-use or redevelopment.

The properties have not yet been identified but will consist of single- and multi-family units and vacant lots located within the City of Pueblo. The exact number of properties to be inspected is not presently known.

At a minimum, XRF inspection services, lead wipe sampling, and soil samples are requested. Additionally, on an a la carte basis, project risk assessments, lead hazard screening, paint stabilization plans, and clearance sampling may be requested.

III. RISK ASSESSOR QUALIFICATIONS

The risk assessor firm whose proposals are accepted will enter into an agreement with the City containing a requirement that it will utilize personnel for the performance of its functions and work who meet the specified qualifications and requirements.

IV. RISK ASSESSOR REQUIREMENTS

In submitting a proposal, each Proposer agrees that it will maintain, at a minimum, the following performance and technical capabilities:

- All inspector/risk assessors must be experienced in lead-based paint inspection and sampling and possess all current and required State of Colorado certifications and licenses, and must demonstrate their familiarity with and ability to comply with all applicable Environmental Protection Agency (EPA), HUD, other Federal, State and local laws and requirements.
- Proposer shall maintain proof of EPA certifications and State licenses required for each employee used in the performance of this Agreement.
- The Inspector/Risk Assessor shall provide and maintain all required State and Federal Radioactive Licenses and Certifications.

Proposer hereby warrants that no current employee, consultant or subcontractor of Proposer, has been convicted of a felony charge, either in State or Federal court, nor has pending against him or it before any tribunal any misdemeanor or felony charge stemming from facts involving allegations of fraud or conduct indicating moral turpitude.

Proposer shall ensure that sufficient personnel are maintained and available for contractor to perform services required by the scope of this Agreement.

V. PROPOSER QUALIFICATIONS

Proposer's work must comply with the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing, specifically Chapters 5, 7, and 15, which deal with risk assessment, inspection and clearance. All required services, reports and other documentation must meet the most stringent set of requirements, whether EPA, HUD, or State of Colorado. Each Proposer submitting proposal should demonstrate its understanding of and experience with these requirements, and provide documentation with its proposal showing that Proposer and its employees are properly licensed with the State of Colorado. Examples of inspection and clearance reports may be included with the proposal to demonstrate qualifications and experience. All reports and other documentation submitted must be prepared for public dissemination. Proposer or its subcontractors will be required to furnish all supervision, labor, materials, and equipment necessary to accomplish the LBP testing, assessment, and clearance services.

VI. SCOPE OF SERVICES

1. X Ray Fluorescence (XRF) Testing

All interior, exterior, and common areas with painted components shall be tested by a certified lead inspector and/or risk assessor. The certified inspector shall use an RMD or Niton XRF instrument, which analyzes both the 'L' and 'K' electron shell, or an approved equal approved. XRF analyzers requiring substrate correction will not be accepted.

Every painted component in every room shall be tested including all windows, baseboards, and closet walls. Non-painted components such as glazed tile and vinyl mini-blinds shall also be tested.

A set of instrument calibrations shall be performed before and after each single-family inspection.

2. Paint Chip & Dust Wipe Sampling

Dust wipe sampling shall be done in accordance with HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing, specifically Chapter 5. A 2"x 2" (4 sq inch) paint chip sampling shall be taken when an inconclusive XRF reading is obtained. Sampling shall be in accordance with Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing. Risk Assessor/Inspector shall select a testing laboratory with NLLAP accreditation and provide the NLLAP Certification with the assessor's report.

3. Visual Inspection and Assessment

A surface-by-surface visual inspection of all painted surfaces throughout all interior and exterior surfaces on the entire property will also be required to determine which painted surfaces and components are deteriorated, and to quantify the square foot amounts of deteriorated lead-based paint, including the number of windows, doors and other specific components.

VII. ADDITIONAL SERVICES AT CITY'S OPTION

The City **requires** that Proposer's address the following optional services, which may be hired in City's sole and absolute discretion:

1. **Risk Assessment and Paint Stabilization Plan with Cost Estimate** - If requested, a full risk assessment report and paint stabilization plan with cost estimate shall be provided in accordance with HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing, specifically Chapter 5. Risk assessment shall include XRF paint inspection results, paint sampling as required, dust wipes, and soil samples along with an evaluation of findings. The evaluation of findings shall include a management plan to mitigate the existing hazards, complete the proposed construction, and minimize the potential for additional contamination during the construction process.

2. **Clearance Testing** - After rehabilitation/abatement, the successful Risk Assessor selected by City may be called upon to perform LBP Clearance Testing on the tested homes after rehabilitation work is performed.

Following lead hazard reduction/paint stabilization activities, the inspector will return to the property and perform a visual inspection to ensure that all deteriorated lead based paint surfaces have been stabilized. Upon completion of the visual inspection (assuming paint stabilization work has been satisfactorily completed), the inspector will collect dust wipe samples in accordance with State and Federal Regulations, including, but not limited to Chapter 15 of the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing.

The clearance protocol will require wipes be collected from the floor, window sill and window well of each room that was determined to have lead-based paint above the de minimis levels, in addition to another floor sample from an adjacent area within 5-feet of the work area. A blank wipe sample along with a completed and signed chain of custody should be included with every set of samples collected.

Exterior clearance will be achieved by visual inspection and through soil sampling. The inspector will perform a visual inspection to ensure that all deteriorated lead based paint surfaces have been stabilized, that no paint chips are visible on the ground, and that appropriate soil samples are taken in accordance with Chapter 15 of the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing. Clearance tests and reports must be submitted to us, along with a Lead-Hazard Free Certificate, all to be posted for public information. If the property fails the Clearance test, the successful Risk Assessor shall inform the City in its report, and the City shall be responsible for instructing the third party contractor to continue stabilization work until the property is cleared. The successful Risk Assessor shall continue to conduct clearance testing until the property is properly cleared and a Lead-Hazard Free Certificate is issued.

VIII. REPORTING

The results of the initial XRF Testing and the Visual Inspection in its entirety shall be submitted in the form of the required narrative report for each property, consisting of the testing results and the locations of all deteriorated paint. Digital photos must be taken and submitted of the front of the house, and of any defective components or surfaces that are determined to contain lead-based paint.

If the property requires stabilization as indicated above, the successful Risk Assessor, at the City's option, may be requested to submit a Risk Assessment and a Stabilization Scope of Work and Cost Estimate.

If contracted to do so, upon stabilization of the property (by another third-party contractor), the lead risk assessor shall submit a Final Clearance Testing report in the required format.

To reiterate, all reporting must comply with the strictest standard which is applicable (ARAR), whether HUD, EPA, or State.

IX. TIME REQUIREMENTS

1. **Initial XRF Testing, Visual Inspection, Dust Wipe Sampling, and Soil Sampling:** These initial reports, must be completed and submitted within a maximum of 10 business days. A Lead Safe Certificate must be issued immediately if the property is found to be lead free.

2. **Risk Assessments, Paint Stabilization Plan, Clearance Testing, and Lead Safe Certificates:** Final examinations, if contracted to do so, must be completed within a maximum of 5 business days of assignment. Lead Free Certificates must be issued immediately upon the successful completion of the project. Risk assessments and paint stabilization plans must be completed and submitted within 10 business days of assignment.

X. CONTRACT TIME FRAME

The time frame for completion of the contracted services is twenty (20) calendar days after the notice to proceed on any parcel of property. The contract period shall terminate 18 months from the date of acceptance of proposal and execution of a contract with City.

XI. PROPOSALS

Proposals by risk assessors shall include the following information: The proposal shall be considered a technical offer of what the assessor proposes to provide and shall be incorporated in any contract award, as deemed appropriate by the City. Using Proposer's company letterhead and any additional pages necessary, Proposer shall submit its responses to all RFP items and attach same to the Proposal Response Cover Sheet. Failure of a Proposer to respond to any of the following technical submittal requirements may be grounds for considering a proposal non-responsive.

This will be a qualification and cost based procurement process. Proposals will only be considered from risk assessor's that have documented experience of similar projects and qualified personnel who are capable of providing the required services. All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to the corrected error. The person signing the Proposals must initial all corrections in ink.

Proposal should include:

1. **Proposed Scope of Work** – The risk assessor's proposal of what it will provide the City in accordance with this request.

2. **Statement of Qualifications** –

a. The risk assessor firm's name, address, phone, and contact person. Basic information, including years of experience and education.

b. The risk assessor's professional qualifications, experience on similar projects, the qualifications and experience of his/her staff, and availability for this project.

c. Describe similar or recent projects for which the risk assessor is responsible that demonstrate the risk assessor's capability to meet schedule deadlines without delays, cost escalations or overruns. Submit references (name and current telephone number) of a client contact for each of the projects.

d. Submit three copies of example reports for paint inspection, risk assessment, and clearance reporting.

3. Fee Schedule – Submit a fixed fee schedule following the same format as “Exhibit A” for providing risk assessor/inspector services, wipe, paint, and soil sampling including a two-day expedited turn around time, and travel and per diem charges. The risk assessor/inspector's fee shall include all expenses occurred by the firm to complete each individual property.

4. Insurance Certification – Submit current insurance certificates for professional liability insurance, which indicates limits of liability, and workers compensation. If selected, the successful firm shall provide certificates of insurance that also name the City of Pueblo as additional insured's.

5. Miscellaneous Forms - Completed PERA Statement (Section XX), Vendor Application and W-9 (Attached as Exhibits D & E).

Proposer's submitting a proposal must submit five (5) complete copies (one of which must be an unbound, un-tabbed, signed original).

XII. WRITTEN AGREEMENT

The selected risk assessor shall be required to enter into an agreement with the City substantially in the same sample form attached hereto (see Exhibit B) and be required to comply with all applicable Federal and State Standards, orders and regulations. The final agreement form will be modified only to the extent as it applies to this service. Each Proposer submitting a proposal must identify in its responsive submittal any provisions of the contract form that it requests be modified, together with the proposed modification language and its reasons for requesting such modification. Signature on the Proposal Response Cover Sheet shall serve as an acknowledgment that the Proposer is willing to enter into the referenced agreement with the City of Pueblo, without modification (unless described in the proposal per above), if its proposal is accepted.

XIII. OMISSIONS

Should the City omit anything from the Request for Proposal which is necessary for a clear understanding of the work, or should it appear that various instructions are in conflict, then any person desiring to submit a proposal shall request clarification from the City of Pueblo in writing not less than seventy-two (72) hours prior to the time of the opening date given above. Clarification in response thereto, if any, will be issued to all RFP holders who have expressed interest in the RFP.

XIV. ACCEPTANCE OF PROPOSAL AND EVALUATION PROCESS

Proposers must complete and return the entire Request for Proposals packet. A selection committee consisting of City staff members will evaluate and select the proposer to provide the required services based on the completed Proposal responses. The selection committee shall be the judge in determining how the evaluation process shall be conducted and which risk assessor shall be considered for award as deemed to be in the best interest of the City.

The selection process shall be based on a comparative analysis of the professional qualifications, costs and time frame necessary for satisfactory performance of the services required and the appraisal strategies summarized in the proposal. The City shall be the sole judge in determining how the evaluation process shall be conducted and what vendor, if any, shall be considered for award as deemed to be in the best interest of the City.

XV. REJECTION OF PROPOSALS

No Proposal shall be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to the City, upon debt or contract or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that may be deemed irresponsible or unreliable by the City. Proposers will be required to submit satisfactory evidence that they have the necessary financial resources to perform and complete the work outlined in this RFP.

XVI. DEBARMENT

By submitting this Proposal, the proposer certifies that neither it, nor any of its principals, members, partners, officers, or directors is presently debarred, suspended, in the process of debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency.

XVII. EQUAL OPPORTUNITY

The City of Pueblo is an Equal Opportunity Employer. Proposers will commit to and meet the nondiscrimination and equal employment requirements of Section 1-8-3, P.M.C. Minority and Woman Owned Businesses are encouraged to submit Proposals.

City of Pueblo will make reasonable efforts to treat all proposers fairly through the solicitation, evaluation and selection process. The procedures established herein are designed to give all parties reasonable access to the same relevant information.

XVIII. COST OF DEVELOPING PROPOSALS

All costs related to the preparation of the Proposals and any related activities are the sole responsibility of the Proposer. The City assumes no liability for any costs incurred by Proposers throughout the entire selection process.

XIX. PROPOSALS OWNERSHIP / CONFIDENTIALITY

All Proposals, including attachments, supplementary materials, addenda, etc. shall become the property of the City and will not be returned to the proposer. The only documents that will be considered confidential will be financial statements or trade secrets that are specifically marked "CONFIDENTIAL" on each page. All other documents submitted to the City will be subject to the Colorado Open Records Act. Proposals that are copyrighted or marked "CONFIDENTIAL" in their entirety will be rejected and not receive consideration for award.

XX. PERA LIABILITY

The Contractor shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The

Contractor shall fill out the questionnaire attached as Exhibit C and submit the completed form to City as part of the signed Agreement.

XXI. ADDITIONAL INFORMATION

For information concerning the Request for Proposal or its procedures and requirements (i.e. submission deadline, forms required, etc.), interested parties may submit written inquiries to Naomi Hedden, Director of Purchasing at (719) 553-2350, via fax (719) 553-2351 or e-mail at nchedden@pueblo.us. It is understood that any/all changes or revisions to the published specifications will be through written addendum or clarification.

Exhibit "A" – Pricing Schedule	Charge
Travel Charge per site	
Per Diem per site	
LBP Inspection Report per site	
XRF Sampling per Interior Room Assume the following components: <ul style="list-style-type: none"> ▪ Window Trough, Sill, Sash, Jamb, and Casing ▪ Door, Jamb, and Casing ▪ Baseboard, plus two misc. trims ▪ Four Walls, Ceiling, Floor ▪ Closet Door, Casing, Rod, Shelf, Walls 	
XRF Sampling per Exterior Room Assume the following components: <ul style="list-style-type: none"> ▪ Exterior wall ▪ Exterior window casing ▪ Exterior door casing ▪ Porch floor or stoop ▪ Porch ceiling or soffit ▪ Fascia ▪ Two misc. trims 	
Dust wipe sampling per sample	
Composite dust wipe sampling per sample Note: (Composite samples shall contain a maximum of 3 media)	
Soil sampling per sample	
Paint chip sampling per sample	
Clearance single wipe sampling per sample	
Clearance composite wipe sampling per sample	
Clearance soil sampling per sample	
48 hour expedited service charge per sample	
Clearance Report per dwelling	
Single-Family Risk Assessment report with paint stabilization plan and cost estimate	
Multi-Family Risk Assessment Report (12 units or less) with paint stabilization plan and cost estimate	
Lead Hazard Screen per dwelling	
Other Anticipated Costs:	

**SAMPLE
AGREEMENT
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered this _____ day of _____, 200__, by and between Pueblo, a Municipal Corporation ("Client") and _____ (hereinafter referred to as "Consultant") for _____ Consultant to render professional services for Client with respect to _____ and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES.

(a) Consultant shall satisfactorily perform the professional planning and consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Basic Services"). Such services shall include all usual and customary professional _____ services including any required drafting or design services incident to its work on the Project. In the event this Agreement follows the selection of Consultant by Client pursuant to a Request for Proposals or RFP, all of the requirements of that Request for Proposal or RFP incorporated herein by reference, unless any requirement is expressly excluded in Schedule 1.

(b) To the extent Consultant performs any of the Project work through subcontractors or subconsultants, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subcontractors or subconsultants as it is for services performed directly by Consultant or Consultant's employees.

(c) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

SECTION 2. CONSULTANT'S RESPONSIBILITIES.

(a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.

(b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.

(c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.

(d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant represents that Schedule 3 attached hereto is the schedule by which Consultant proposes to accomplish its work, with time periods for which it will commence and complete each major work item. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to this schedule and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of Project work. Consultant further acknowledges that its schedule has accounted for all reasonably anticipated delays, including those inherent in the availability of tools, supplies, labor and

utilities required for the work, the availability of information which must be obtained from any third parties, and all conditions to access to public and private facilities.

(e) Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Scope of Work described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of this Agreement, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Consultant shall be compensated for its direct costs and professional time at the rates set forth in Schedule 2 attached hereto.

SECTION 3. FEES FOR SERVICES; PAYMENT.

(a) Client will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement, the maximum sum of U.S. \$ _____, computed as set forth in Schedule 2.

(b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and for reimbursable expenses incurred. Applications for payment shall be submitted based upon the hourly rates and expense reimbursement provisions set forth in Schedule 2 attached hereto, and shall contain appropriate documentation that such services have been performed and such expenses incurred. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.

(c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time or similar expenses unless otherwise provided and listed in Schedule 2.

(d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement shall be governed by the provisions of Section 2(e).

(f) In the event services under this Agreement are phased and to be performed in more than one fiscal year or are subject to annual appropriation, Consultant acknowledges that funds only in the amount of initial appropriation are available and it shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

SECTION 4. CLIENT'S RESPONSIBILITIES.

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for additions or obligations exceeding a value which is the lesser of \$5000 or 5% of the maximum contract price.

(c) Client shall examine all documents presented by Consultant, and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERMINATION.

(a) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress.

(b) Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to date of termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(c) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.

(d) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS.

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with section 1(c) of this Agreement.

SECTION 7. USE OF DOCUMENTS.

(a) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY.

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance issued to and covering the liability of Consultant with respect to all work performed by Consultant and its subcontractors and subconsultants under this Agreement, to be written on a Commercial General Liability policy form CG 00 01, with coverage limits of not less than Six Hundred Thousand and No/100 Dollars (\$600,000.00) per person and occurrence for personal injury, including but not limited to death and bodily injury, and Six Hundred Thousand and No/100 Dollars (\$600,000.00) per occurrence for property damage. This CGL policy shall be endorsed naming the Client, its officers, agents and employees as additional insureds. This CGL policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of this Agreement.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible of not more than \$ _____.

(iv) Comprehensive Automobile Liability Insurance effective during the period of the Agreement, and for such additional time as work on the Project is being performed, written with limits of liability for injury to one person in any single occurrence of not less than \$150,000 and for any injury to two or more persons in any single occurrence of not less than \$600,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the Project site of motor vehicles, including any automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS.

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. REQUIRED FEDERAL PROVISIONS. [Delete if inapplicable.]

NOTE - THIS SECTION MAY REQUIRE REVISION

(a) Consultant understands that Client may be funding the Project in whole or part with funds provided _____ . Consultant agrees it is subject to and shall comply with all applicable provisions of said _____, the Act under which the contract award has been made, and applicable regulations.

(b) Consultant shall comply with all applicable Federal, State, and local laws applicable to its activities.

(c) All records with respect to any matters covered by this Agreement shall be available for inspection by Client, _____ at any time during normal business hours and as often as Client, _____ deems necessary, to audit, examine and make excerpts or transcripts of relevant information, and otherwise to perform its official functions or duties.

SECTION 11. MISCELLANEOUS.

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client, Attention:

_____, Pueblo, Colorado, or to Consultant at

_____. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 12. STATE-IMPOSED MANDATES PROHIBITING ILLEGAL ALIENS FROM PERFORMING WORK

(a) At or prior to the time for execution of this Agreement (which may be referred to in this section as this “Contract”), Consultant (which may be referred to in this section as “Contractor”) shall submit to the Purchasing Agent of City its certification that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in either the “E-Verify Program” created in Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the “Department Program” established pursuant to §8-17.5-102(5)(c) C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under this contract;

(II) Enter into a contract with a subconsultant that fails to certify to Contractor that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

(c) The following state-imposed requirements apply to this contract:

(I) The Contractor shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.

(II) The Contractor is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(III) If the Contractor obtains actual knowledge that a subcontractor or subconsultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

A. Notify the subconsultant and the Client’s Purchasing Agent within three (3) days that the Contractor has actual knowledge that the subcontractor/subconsultant is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor/subconsultant if within three (3) days of receiving the notice required pursuant to subparagraph (c)(III)A. above the subcontractor/subconsultant does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor/subconsultant if, during such three (3) days, the subcontractor/subconsultant provides information to establish that the subcontractor/subconsultant has not knowingly employed or contracted with an illegal alien.

(IV) The Contractor is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as “CDLE”) made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section 12 by the Contractor shall constitute a breach of contract and grounds for termination. In the event of such termination, the Contractor shall be liable for Client's actual and consequential damages.

(e) As used in this Section 12, the terms "subcontractor" and "subconsultant" shall mean any subconsultant or subcontractor of Consultant rendering services within the scope of this Agreement.

SECTION 13. SOLE SOURCE GOVERNMENT CONTRACTS; LIMITATIONS UPON CAMPAIGN CONTRIBUTIONS

(a) Section 15 of Article XXVIII of the Colorado Constitution is hereby incorporated into this agreement by reference. Sections 15 and 17 of Article XXVIII of the Colorado Constitution provide as follows:

Section 15: Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

Section 17:

(1) Every sole source government contract by the state or any of its political subdivisions shall incorporate article XXVIII, section 15, into the contract. Any person who intentionally accepts contributions on behalf of a candidate committee, political committee, small donor committee, political party, or other entity, in violation of section 15 has engaged in corrupt misconduct and shall pay restitution to the general treasury of the contracting governmental entity to compensate the governmental entity for all costs and expenses associated with the breach, including costs and losses involved in securing a new contract if that becomes necessary. If a person responsible for the bookkeeping of any entity that has a sole source contract with a governmental entity, or if a person acting on behalf of the governmental entity, obtains knowledge of a contribution made or accepted in violation of section 15, and that person intentionally fails to notify the secretary of state or appropriate government officer about the violation in writing within ten business days of learning of such contribution, then that person may be contractually liable in an amount up to the above restitution.

(2) Any person who makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

(3) The parties shall agree that if a contract holder intentionally violates section 15 of section 17(2), as contractual damages that contract holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years. The governor may temporarily suspend any remedy under this section during a declared state of emergency.

(4) Knowing violation of section 15 or section 17(2) by an elected or appointed official is grounds for removal from office and disqualification to hold any office of honor, trust or profit in the state, and shall constitute misconduct or malfeasance.

(5) A registered voter of the state may enforce section 15 or section 17(2) by filing a complaint for injunctive or declaratory relief or for civil damages and remedies, if appropriate, in the district court.

(b) This section applies only to sole source government contracts and does not apply to any contract, which used a public and competitive bidding process in which the City solicited at least three bids prior to awarding the contract.

(c) Contractor certifies, warrants, and agrees that it has complied and will comply with Colorado Constitution Article XXVIII, including but not necessarily limited to the following prohibitions and obligations:

(1) If during the term of the contract, Contractor holds sole source government contracts with the State of Colorado and any of its political subdivisions cumulatively totaling more than \$100,000 in a calendar year, then for the duration of this contract and for two years after, Contractor will not make, cause to be made, or induce by any means a contribution, directly or indirectly, on behalf of contractor or contractor's immediate family member(s) for the benefit of any political party or for the benefit of any candidate any elected office of the State or any of its political subdivisions; and

(2) Contractor represents that Contractor has not previously made or caused to be made, and will not in the future make or cause to be made, any contribution intended to promote or influence the result of a ballot issue election related to the subject matter of this contract; and

(3) Contractor will satisfy contractor's obligations to promptly report to the Colorado Department of Personnel & Administration ("CDPA") information included in the CDPA's "Sole Source Government Contract Summary" and "Contract Holder Information" forms regarding this contract and any other sole source government contracts to which contractor is a party, and shall contemporaneously provide a copy of such report(s) to City's Purchasing Agent; and

(4) Contractor understands that any breach of this section or of Contractor's responsibilities under Colorado Constitution Article XXVIII may result in either contractual or constitutionally mandated penalties and remedies; and

(5) A Contractor that intentionally violates Colorado Constitution Article XXVIII, Section 15 or 17(2), shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions for three years; and

(6) By execution of this contract, Contractor hereby confirms it is qualified and eligible under such provisions to enter into this contract.

(d) For purposes of this section, the term "Contractor" shall mean "Consultant" as defined in this Agreement, and shall include persons that control ten percent or more shares or interest in Contractor, as well as Contractor's officers, directors, and trustees. The term "immediate family member" shall include a spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner. All other terms and phrases used in this section shall have the meanings defined in Article XXVIII of the Colorado Constitution.

(e) In the event any provision of Article XXVIII of the Colorado Constitution is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction in a non-appealable action, has

been repealed retroactively or otherwise found to not apply to this contract or agreement, then the corresponding requirement or requirements of this section shall have no further force and effect, and shall not constitute a requirement of this contract, as of the date of such holding, declaration, repeal or determination.

SECTION 14. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the questionnaire attached as Exhibit ___ and submit the completed form to Client as part of the signed Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

By _____
President of the City Council

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

CONSULTANT:

By: _____

Name:
Title:

**COLORADO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
SUPPLEMENTAL QUESTIONNAIRE TO BE ANSWERED BY
ANY BUSINESS PERFORMING SERVICES FOR THE CITY OF PUEBLO**

Pursuant to section 24-51-1101(2), C.R.S., salary or other compensation from the employment, engagement, retention or other use of a person receiving retirement benefits (Retiree) through the Colorado Public Employees Retirement Association (PERA) in an individual capacity or of any entity owned or operated by a PERA Retiree or an affiliated party by the City of Pueblo to perform any service as an employee, contract employee, consultant, independent contractor, or through other arrangements, is subject to employer contributions to PERA by the City of Pueblo. Therefore, as a condition of contracting for services with the City of Pueblo, this document must be completed, signed and returned to the City of Pueblo:

(a) Are you, or do you employ or engage in any capacity, including an independent contractor, a PERA Retiree who will perform any services for the City of Pueblo? Yes____, No____. (Must sign below whether you answer "yes" or "no".)

(b) If you answered "yes" to (a) above, please answer the following question: Are you 1) an individual, 2) sole proprietor or partnership, or 3) a business or company owned or operated by a PERA Retiree or an affiliated party? Yes ____, No ____.
If you answered "yes" please state which of the above listed entities (1, 2, or 3) best describes your business:_____.

(c) If you answered "yes" to both (a) and (b), please provide the name, address and social security number of each such PERA Retiree.

_____	_____
Name	Name
_____	_____
Address	Address
_____	_____
Social Security Number	Social Security Number

(If more than two, please attach a supplemental list)

If you answered "yes" to both (a) and (b), you agree to reimburse the City of Pueblo for any employer contribution required to be paid by the City of Pueblo to PERA for salary or other compensation paid to you as a PERA Retiree or paid to any employee or independent contractor of yours who is a PERA Retiree performing services for the City of Pueblo. You further authorize the City of Pueblo to deduct and withhold all such contributions from any moneys due or payable to you by the City of Pueblo under any current or future contract or other arrangement for services between you and the City of Pueblo.

Failure to accurately complete, sign and return this document to the City of Pueblo may result in your being denied the privilege of doing business with the City of Pueblo.

Signed _____, 20____.

By: _____

Name: _____

Title: _____

For purposes of responding to question (b) above, an "affiliated party" includes (1) any person who is the named beneficiary or cobeneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation.

Exhibit D: NEW VENDOR HTE APPLICATION

(Only to be filled out and attached to the proposal –
DO NOT fax to the Purchasing Department as indicated on the form)

Exhibit E: W-9 Form

(Only to be filled out and attached to the proposal –
DO NOT fax to the Purchasing Department as indicated on the form)