ADDENDUM NUMBER TWO
RFP 8-20

To: All Prospective Proposers and all others concerned

From: City of Cheyenne, Purchasing Manager, TJ Barttelbort

Date: March 10, 2020

Subject: Addendum Number Two to Request for Proposal 8-20 for Investment Advisory Services

The changes, clarifications, omissions, additions, and/or alterations in, on, and to the proposal information and specifications shall apply to the Request for Proposal submitted for and to the project indicated above. Except as modified by this Addendum Number Two, all of the terms and provisions of the Request for Proposal for the above listed project remain in full force and effect. This Addendum Number Two supersedes all previous instructions pertaining to the items listed:

Questions and Responses:

Q1: Under II. Scope of Services – “Be a registered Investment Advisor as defined and regulated by the Securities and Exchange Commission and be registered with the Securities Division of the Wyoming Secretary of State.”

FIRM is registered with the SEC as a federally-covered investment advisor. Based upon our review of Wyoming statute, FIRM is presently (and prospectively) exempt from registration with the Securities Division of the Secretary of State’s office. We cite the following section(s) of law, of which we could avail ourselves of various exemptions, but most specifically the one highlighted below:

17-4-403. Investment adviser registration requirement
(a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.
(b) The following persons are exempt from the registration requirement of subsection (a) of this section:
(i) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:
   (A) Federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act;
   (B) Institutional investors;
   (C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or
   (D) Any other client exempted by rule adopted or order issued under this act.

(ii) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (i) of this subsection; or

(iii) Any other person exempted by rule adopted or order issued under this act.

Is registration with the Securities Division of the Wyoming Secretary of State a pre-condition to engagement under this RFP if the selected firm is exempt from registration? If registration is required, is it acceptable to register upon notice of selection and prior to contract negotiation/execution?

A1: It is the Proposer’s responsibility, to ensure they are in compliance with all Wyoming Laws and in compliance with the Securities Division of the Wyoming Secretary of State. If any firm is exempt via the above statute, they must provide written confirmation of this fact in their Proposal.

Q2: Section VII. Format of Proposal speaks to a requirement that the proposal must “Provide proof of bonding up to $5,000,000”. We assume this speaks to insurance coverages totaling at least $5,000,000, as bonds are typically posted to guarantee performance standards or completion.

FIRM maintains insurance coverage up to $2,000,000, which is standard for most professional services agreements. Will the City offer a waiver or otherwise amend its RFP to allow for a coverage amount that is less than the stated $5,000,000 requirement? Many qualified and reputable firms with adequate insurance coverage for this type of engagement will likely be unable to meet the current, stated standard.

A2: All firms proposing shall meet all requirements of the RFP. If any proposer is unable to meet the written requirements, they shall explicitly identify any exceptions or deficiencies where they do not meet the minimum requirements.

Q3: Section VII. C. makes reference to the Bloomberg-Barclays 1 – 3 Year Gov./Credit Index. This benchmark is different than what is stated in the attached Investment Policy and Portfolio Guidelines for each entity.
Is there a reason for the distinction? Additionally, many respondents will likely not operate “funds”, as stated. Will a response that merely states the investment advisor does not operate a fund be viewed negatively?

A3: Proposers shall utilize the Bloomberg Barclays Index. Proposers shall disregard the benchmark included in the Investment Policy and Portfolio Guidelines.

It will not be viewed negatively if proposers do not operate “funds”.

Q4: Section IX. Award of Contract states “The selected advisor shall be required to sign a professional services agreement in the form provided by the City of Cheyenne and Board,…”

Can a sample professional services agreement/contract be made available for review to ensure our firm can comply and is willing to accept the stated terms?

A4: A sample Professional Services Agreement (PSA) is included with this Addendum Two. The included sample PSA is subject to change or revision prior to final execution.

Q5: Has the City previously made investment purchases directly or have you had a firm manage your cash/investments for you?

A5: The only purchases directly made by the City of Cheyenne are Certificates of Deposit (CDs) at local financial institutions. Otherwise all purchases have been conducted via a managed account/firm.

Q6: Have you purchased gov’t securities (treasuries and agencies) in the past?

A6: The City believes that government securities have been purchased in the past. All future purchases must be conducted in accordance with the Request for Proposal, and Investment Policy and Portfolio Guidelines.

Q7: Do you prefer the firm you’re working with, or that holds your securities, has a location in Wyoming?

A7: The City of Cheyenne does not have a preference on if the Proposer has a location in Wyoming. All proposers must be legally able to conduct this type of business/service in Wyoming.

ADDENDUM TWO ACKNOWLEDGED:

BY_____________________________ TITLE_____________________________
(Addendum must be signed and returned with proposal or receipt of the addendum must be acknowledged within the submitted Proposal).

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
THIS AGREEMENT is made and entered into this _______ day of ________________, 2019, by and between the City of Cheyenne, located at 2101 O’Neil Avenue, Cheyenne, Wyoming 82001 (“City”), and ____________________________________________, located at ____________________________________________ (“Consultant”).

REQUITALS

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

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

2. **TIME OF PERFORMANCE**
The work included in this Scope of Work will be completed by_______________, as stated in Exhibit A.

3. **CONSULTANT RESPONSIBILITY**
In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the Consultant, the Consultant will, without additional compensation, correct those services not meeting such a standard.

4. **COMPLIANCE WITH LAWS**
The Parties agree that they will perform their obligations as provided in this Agreement in accordance with all applicable laws and ordinances.

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

6. **INDEMNIFICATION/HOLD HARMLESS**

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

7. **INSURANCE REQUIREMENTS**

The Consultant must provide proof of the following insurance coverages:

**Commercial General Liability Insurance**

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

**Workers’ Compensation**

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

**Professional Liability Insurance**

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

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

a. Consultant shall, concurrently with the execution of this Agreement, provide the City with a certificate of insurance demonstrating that such coverage is or shall be in effect at the time the Consultant begins the provision of services under this Agreement; and

b. In the event the Consultant’s services extend into a future policy period, the Consultant shall, prior to the policy expiration date, provide the City
with a new certificate of insurance demonstrating that such coverage is or shall be in effect during all periods of time that Consultant will provide services under this Agreement; and

(c) Consultant shall maintain said “claims made” coverage for a period of five (5) years following the last date that Consultant has provided services under this Agreement; and

d. In the event the Consultant or the insurer terminates “claims made” coverage prior to the expiration of the periods provided in subparagraphs a., b., or c. of this paragraph, the Consultant shall provide to the City advance written notification of the termination of said coverage and shall provide the City with an endorsement for an extended reporting period (“tail coverage”) which shall be in effect for a period of time not less than five (5) years following the last date that Consultant has provided services under this Agreement.

Additional Insurance Information

The Consultant shall name the City of Cheyenne as an Additional Insured by endorsement on its insurance policies and shall provide the City with a copy of the endorsements. This requirement does not apply to workers’ compensation and professional liability insurance policies.

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

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

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

Any insurance company providing coverage under this Agreement shall have a minimum A. M. Best rating of A- (excellent).
8. **MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES** 49 C.F.R. Part 26
   All parties to this Agreement assure that no person will be excluded from participation in, denied the benefits of, or otherwise discriminated against, in connection with the award and performance of this Agreement on the grounds of age, race, color, disability, national origin or sex.

9. **COMPENSATION**
   In consideration of the services to be performed pursuant to this Agreement, the Consultant will bill the City and the City agrees to pay Consultant a not to exceed amount of ________________ Dollars ($______) as stated in Exhibit A.

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

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

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

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

14. **REMEDIES**
    In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to cure the default. In the event the default remains uncorrected, the non-defaulting party declaring default may elect to:
       a. Terminate the Agreement and seek damages, which damages shall not exceed the contract amount; or
       b. Treat the Agreement as continuing and require specific performance.

15. **TERM AND TERMINATION**
    This Agreement shall be for a period of ________________. The parties may by mutual written agreement renew or extend this Agreement.
The City may, without cause, and upon thirty days’ written notice to the Consultant, terminate this Agreement in whole or in part at any time, for the City’s convenience. Upon receipt of such notice, the Consultant shall:

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

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

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

18. GOVERNMENTAL IMMUNITY
The City of Cheyenne, along with its officials and employees, does not waive its governmental immunity by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the Agreement. Furthermore, the City specifically retains all immunities and defenses available to it as a sovereign or governmental entity pursuant to Wyo. Stat. § 1-39-101, et seq., and all other relevant state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental immunity.

19. MONITORING ACTIVITIES
The City shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its sub-consultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the related work.
20. **OWNERSHIP OF DOCUMENTS AND WORK PRODUCT**

All deliverables by the Consultant, all work product of the Consultant, all notes, calculations, memoranda, or any other documentation generated by the Consultant pursuant to the scope of this Agreement, shall be the property of the City of Cheyenne and shall be provided to the City of Cheyenne immediately upon request.

21. **NON-DISCRIMINATION**

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

22. **PROFESSIONAL REGISTRATION**

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

23. **ENTIRETY OF AGREEMENT**

This Agreement consisting of ____ (__) pages, and Exhibit A consisting of ____ (__) pages, contain the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter.

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

City of Cheyenne

By: ____________________________________

(SEAL)

Marian J. Orr, Mayor

Attest:

Kristina F. Jones, City Clerk

Consultant

By: ____________________________________

Print Name: ____________________________

Date: ____________________________