



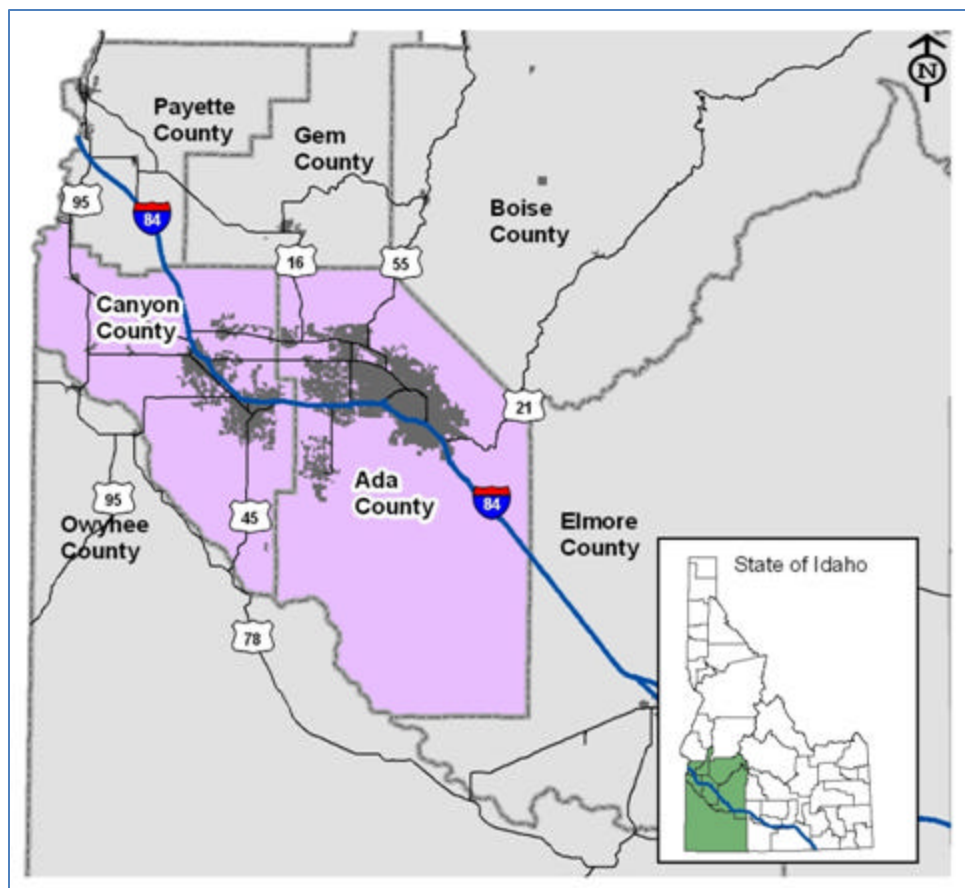
## Request for Qualifications and Request for Proposals RFQ/RFP 2012-01 Congestion Management: Improving Planning and Operations Coordination

### Overview

The Community Planning Association of Southwest Idaho (COMPASS) is seeking consulting services to assist in developing a more comprehensive congestion management process and its applicable elements as part of the update to the regional long-range transportation plan, *Communities in Motion 2035*. This update process is currently underway and will conclude in summer 2014.

An Intelligent Transportation System (ITS) Plan currently exists for the area (*Treasure Valley ITS Strategic Plan* [September 2006]), but needs to be updated to reflect current conditions.

COMPASS is the Metropolitan Planning Organization (MPO) for Ada and Canyon Counties, Idaho. Ada and Canyon Counties are in southwest Idaho's Treasure Valley - the most populous area in the state, growing from a population of 432,345 in 2000 to 581,288 in 2010.



In 2002, the area was officially designated as a Transportation Management Area resulting in the requirement to address more planning factors such as congestion management. Therefore, COMPASS began annual travel time data collection in 2003, developed a Congestion Management System (CMS) plan that was completed in 2005, and has since reported and monitored travel time changes on the system.

800 S. Industry Way, Ste 100

Meridian, ID 83642

P. 208.855.2558

F. 208.855.2559

[www.compassidaho.org](http://www.compassidaho.org)

For more than a decade, the area's transportation agencies have invested in system management and operations strategies mainly focused on I-84 and major arterials. The agencies continue to develop a fiber optic communications network throughout the area, deploy monitoring devices, install dynamic message signs, and upgrade functionality and communications to traffic signals and ITS devices. All of these efforts are generally consistent with the *Treasure Valley ITS Strategic Plan* (September 2006), which needs to be updated to reflect current conditions. COMPASS needs to develop a more cohesive and complete congestion management process to better fulfill current Federal Highway Administration Congestion Management Process guidelines.

### Resource Links

The following links are intended to provide additional background information:

- Statewide ITS Strategic Plan:  
<http://www.compassidaho.org/documents/planning/studies/StatewideITSStratPlan.pdf>
- Treasure Valley ITS Strategic Plan:  
[http://www.compassidaho.org/documents/prodserv/reports/TreasureValleyITSSStrategicPlan\\_Final.pdf](http://www.compassidaho.org/documents/prodserv/reports/TreasureValleyITSSStrategicPlan_Final.pdf)
- Congestion Management System Plan:  
<http://www.compassidaho.org/documents/prodserv/reports/TreasureValleyCMSFinal.pdf>
- Annual Congestion Management Report, 2011:  
<http://www.compassidaho.org/documents/prodserv/reports/2011CMSReport.pdf>
- Maintenance Update to the Transit Element of the Treasure Valley Regional ITS Architecture report:  
[http://www.compassidaho.org/documents/prodserv/reports/TVITSArchitecture\\_TransitUpdate.pdf](http://www.compassidaho.org/documents/prodserv/reports/TVITSArchitecture_TransitUpdate.pdf)

### Proposed Project Framework

**Oversight.** COMPASS is responsible for this project, which will be administered by MaryAnn Waldinger, Project Manager. A technical workgroup, of agency representatives responsible for implementing operations strategies and/or managing the transportation system, will act as the technical oversight committee for this effort.

**Expectations.** COMPASS is seeking proposals that demonstrate direct experience with, and a comprehensive understanding of, congestion management systems, improving the link between operations and long-range transportation planning, ITS planning; and quantitative analysis of such projects.

The proposal shall include the following:

1. Project Lead
2. Project Team
3. An outline of the proposed process to update key elements of the *Treasure Valley ITS Strategic Plan*:
  - a. Document and inventory existing conditions
  - b. Update ITS architecture
  - c. Update and integrate transit ITS architecture
  - d. Update communications plan
4. An outline of the proposed process to develop a more robust congestion management process and include it in the regional long range transportation plan (include operations and management):
  - a. Update projects and programs appropriate for prioritization and inclusion in the regional long-range plan.
  - b. Identify elements in the *Treasure Valley ITS Strategic Plan* that are more appropriate for the regional long-range transportation plan.

5. A description of the available analytical tool(s) or methods for assessing and forecasting the impacts and benefits of operations implementation:
  - a. Provide two examples demonstrating direct experience with applying analytical tool(s) used in planning for operations-type projects.
  - b. Provide two examples demonstrating direct experience with planning for and evaluating innovative ITS treatments such as an adaptive traffic signal system
  - c. Direct costs for tool(s) – if applicable.
6. Examples or recommendations for more inclusive annual reporting of operations implementation that builds upon existing annual congestion management reports.
7. A description of how the consultant will develop a stakeholder list and work with stakeholders responsible for implementation.
8. A description of how the consultant will work directly with identified stakeholders to address local needs and take inventory of ITS devices and other related infrastructure.
9. A schedule of tasks for the duration of the project.
10. A budget for services (under sealed envelope).
  - a. Task-level, line item for the major sub-tasks

### **Deliverables**

1. Final report(s) updating key elements of the *Treasure Valley ITS Strategic Plan*.
2. Detailed base year inventory of all ITS devices and other related infrastructure.
  - a. Inventory shall include the detail suitable to build a GIS-based inventory that will help identify gaps; assist in programming short-term needs, and plan for long-term goals.
3. Analytical tool(s) capable of testing the effects of operations and management-type strategies and providing benefit/cost analysis of these strategies and/or scenarios.
4. Information sharing process among COMPASS and member agencies about completed projects to keep inventory up to date.
5. An outline of additional elements to include in COMPASS annual congestion management reports that integrate transportation planning, implementation of operations projects, and “measuring” the effects on the system.
6. Documentation and training of COMPASS staff on how to update ITS architecture and apply the analytical tool(s).

All materials must be submitted in the appropriate Microsoft software such as Word, Excel, Access, etc.

### **Submittal Requirements**

A Statement of Qualifications and Proposals must be prepared and submitted in accordance to the guidelines and requirements outlined in this Request for Qualifications and Proposals.

1. Cover letter with a brief narrative describing:
  - a. Respondent’s understanding of the project, and
  - b. Firm(s) or personnel that constitute the team.
2. Comprehensive contact information for all team members and firm(s), highlighting project manager and/or local point of contact for the team. This may be presented in an organizational chart or other format.
3. A brief description of the firm(s) that constitute the team.

4. A brief description of the qualifications of team members who would be performing the work, their roles, and their relevant experience – key members of the team are to be noted. Principals of the involved firm(s) may be listed, but only in the context of their anticipated level of involvement in the project.
5. A list of relevant project-specific references, and the team members' role in these projects, including a brief description of the services provided, and client contact information. Only completed projects should be included.
6. A description of how the team will fulfill the project expectations listed on pages 2 and 3 of this Request for Qualifications and Proposals.
7. Additional references for the principal firm.
8. Statement that all firms included on the team are not barred from federal contracts.
9. Statement of Affirmative Action and Equal Employment Opportunity (EEO). COMPASS may request policy documents at a later date.
10. Disadvantaged Business Enterprise (DBE) status, including name of certifying agency and contact person.
11. Affirmative Action / EEO and DBE identification of subcontractors, if used.

In addition to the above list, respondents are advised of the following requirements and guidelines:

1. Responses - 25 pages maximum:
  - a. Report Cover and Table of Contents are not subject to 25 page limit
  - b. Cover Letter - 2 pages maximum
  - c. Other information - 23 pages maximum
  - d. Budget – under sealed envelope. Labor hours and cost per task (Not subject to page limit)
  - e. Font Size – 10 point
2. Submit ten (10) hard copies plus one (1) PDF file of the complete submittal on a CD, to:  
 Community Planning Association of Southwest Idaho  
 ATTN: Jeanne Urlezaga – RFQ/P 2012-01  
 700 N. East 2<sup>nd</sup> Street, Suite 200  
 Meridian, ID 83642  
  
**(Please be advised this is a new address that will take effect December 2011)**
3. Responses must be received before 1:00 pm MST Friday, December 23, 2011

**Selection Criteria**

Responses will be scored as follows:

Maximum Points

A. Completeness of submittal and adherence to guidelines	5
B. Writing and graphics	5
C. Experience of Project Lead and team with developing congestion management processes within the context of short-term and long-range transportation planning	20
D. Experience (as shown through examples) with applying analytical tools	20
<b>Total Points Possible</b>	<b>50</b>

## Schedule

COMPASS will be using an RFQ/RFP process and the review team may choose to conduct in-person interviews to select a consultant. Interested parties are encouraged to submit questions by 3:00 pm on Thursday, December 15, 2011, pertaining to this RFQ/P. List of key details and dates are below.

Action	Date
RFQ/P Release	November 15, 2011
Question Submittal Closes	December 15, 2011 – 3:00 PM MST
RFQ/P Responses Due to COMPASS	December 23, 2011 – 1:00 PM MST
Interview Notification	January 11, 2012
Interviews (if conducted)	January 20, 2012
Consultant Selection	January 27, 2012

### In addition to the above, respondents are advised of the following:

1. A panel comprised of agency representatives will review materials during this selection process.
2. COMPASS reserves the right to request additional information from a respondent.
3. COMPASS reserves the right to reject any and all responses and waive any irregularities. Issuance of this RFQ/P does not constitute a commitment to proceed to a guaranteed contract.
4. COMPASS' internal policy addresses Conflict of Interest for Professional Services Contractors:  
*No bid, response to request for proposals or response to a request for qualifications submitted to COMPASS may propose to use the services (in whole or in part) of:*
  - 1) a person who is elected to public office in any government entity in, from or representing residents for Ada or Canyon Counties; or
  - 2) a person who is an employee (whether full time or less than full time) of any government entity located in whole or in part in Ada or Canyon Counties
5. Questions regarding the administration of this selection process, contract, accounting, etc. will be directed solely to Jeanne Urlezaga, Director of Operations:
  - a. PHONE: 208-855-2558
  - b. EMAIL: [jurlezaga@compassidaho.org](mailto:jurlezaga@compassidaho.org)
6. Questions and communication regarding the project described in the RFQ/P will be directed solely to MaryAnn Waldinger, Principal Planner:
  - a. No phone call or oral questions will be accepted.
  - b. Questions on this project must be submitted via email to [mwaldinger@compassidaho.org](mailto:mwaldinger@compassidaho.org) and will be accepted until 3:00 pm (MST), Thursday, December 15, 2011.
7. Responses to questions and additional information will be posted on the COMPASS RFP/RFQ webpage:
  - a. <http://www.compassidaho.org/people/jobs.htm>

### Additional Information

An example of COMPASS' standard Professional Service Agreement is attached for your information as Attachment 1.

**PROFESSIONAL SERVICE AGREEMENT  
(PSA) #**

**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN COMMUNITY PLANNING  
ASSOCIATION OF SOUTHWEST IDAHO  
AND**

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**CHAPTER 1**

**CONTRACTOR'S AGREEMENT**

**Dated:** \_\_\_\_\_

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TIME FOR PERFORMANCE:

A. Commencement of CONTRACTOR's Services:

The CONTRACTOR shall commence its scope of the Work on the date of the Notice to Proceed: \_\_\_\_\_.

B. Project Final Completion Date:

The Project date of Final Completion is anticipated to be \_\_\_\_\_. The parties may, by mutual written agreement, amend the Final Completion date. See the Project Scope of Work attached as Appendix E to Chapter 2.

**RECITALS**

- A. COMPASS intends that the Project be completed in a timely manner and is engaging the CONTRACTOR to perform certain services for the Project.
- B. COMPASS and CONTRACTOR each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. COMPASS' engagement of the CONTRACTOR is based upon the CONTRACTOR's representations to COMPASS that it (i) is an organization of professionals experienced in the type of services COMPASS is engaging the CONTRACTOR to perform; (ii) is authorized and licensed, if necessary, to do business in the State of Idaho and the State in which all or any portion of the Project is performed; (iii) is qualified, willing and able to perform professional services for the Project; and, (iv) has the expertise and ability to provide professional services which will meet COMPASS' objectives and requirements, and which will comply with any applicable requirements of governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- D. COMPASS and CONTRACTOR each acknowledges that it has reviewed and familiarized itself with this Contract For Professional Services, including the documents enumerated in ARTICLE 1, and agrees to be bound by the terms and conditions contained therein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

- 1.1 The "Contract For Professional Services" between the parties sets forth the CONTRACTOR's scope of services and is comprised of the following documents:

this "Chapter 1 - CONTRACTOR's Agreement", including the foregoing recitals A. through D., and all attached documents and appendices;

"Chapter 2 - CONTRACTOR's Required Services" and all attached documents and appendices, including RFP/RFQ and responses, incorporated herein by reference;

"Chapter 3 - General Terms and Conditions of Professional Services Contracts" and all attached documents and appendices, incorporated herein by reference;

Additional documents may be created and incorporated by reference into this Agreement by mutual written agreement of the parties.

## **ARTICLE 2**

### **NOTICES**

- 2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

## **ARTICLE 3**

### **COMPENSATION OF CONTRACTOR**

- 3.1 COMPASS shall compensate the CONTRACTOR for Required Services rendered on a not to exceed basis. CONTRACTOR is required to complete a W-9 form prior to the commencement of the work on the Project.

In accordance with the time schedule contained in the CONTRACTOR's Payment Schedule and Billable Rates, attached as Appendix A, COMPASS shall pay the CONTRACTOR payments not to exceed \_\_\_\_\_ (the "Professional Contract Price). Work shall be billed at the hourly rates noted Appendix A. Any amount or percentage to be retained by COMPASS until successful final completion of the Project will also be specified in Appendix A.

- 3.2 COMPASS and the CONTRACTOR shall agree in writing prior to the CONTRACTOR's performance of services outside the Project Scope of Work and whether these services will be performed on an hourly-rate basis or a lump-sum basis. COMPASS shall compensate the CONTRACTOR for such extra services as follows:

- (i) if rendered on an hourly-rate basis, at the hourly rates set forth in the CONTRACTOR's Payment Schedule, attached as Appendix A; and ,
  - (ii) if rendered on a lump sum basis, in an amount mutually agreed to in writing by COMPASS and the CONTRACTOR prior to the performance of such services.
- 3.3 COMPASS shall compensate the CONTRACTOR for customary, necessary and reasonable out-of-pocket expenses pursuant to Paragraph 8.4 of Chapter 3, however, the parties agree that such amount is included in the not to exceed compensation amount identified in § 3.1 above.
- 3.4 To the extent that the CONTRACTOR engages others to perform extra services or incurs out of pocket expense, this amount may not exceed the lump sum amount identified in Para. 3.1. of this Article. Such engagement shall also conform to Para. 3.2 and 3.3 of this Article.

#### **ARTICLE 4**

##### **CIVIL RIGHTS AND OTHER CONDUCT**

- 4.1 Civil Rights Act: During performance of work covered by this agreement, CONTRACTOR for themselves, their assignees, agents, employees, subcontractors and successors agrees they will comply with all regulations and requirements of the U.S. Department of Transportation relative to Title VI of the Civil Rights Act of 1964, as amended. CONTRACTOR as noted above shall not in any way discriminate against any employee or applicant for employment; subcontractor or solicitations for subcontract; or any other individual or firm providing or proposing to provide services based on race, color, sex, national origin, age or handicap/disability. In all solicitations for subcontracts, CONTRACTOR shall provide notice of the Civil Rights requirements of this agreement. CONTRACTOR shall provide all necessary or required information and reports as determined to be necessary by COMPASS and the appropriate federal agency

#### **ARTICLE 5**

##### **SPECIFIC INSURANCE REQUIREMENTS**

- 5.1 The CONTRACTOR shall purchase and maintain, at its expense, from a company or companies licensed or authorized to do business in the state of Idaho and, if all or any portion of the project is performed outside the state of Idaho, in the state in which the Project, or that portion of the Project, is performed, insurance policies containing the following types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or

non-performance of services under this Contract For Professional Services by the CONTRACTOR or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

- (i) Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the state(s) in which the Project is performed.
- (ii) Commercial General Liability which (a) includes, but is not limited to, premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground, explosion and collapse hazard, and personal / advertising injury; and, (b) names COMPASS and COMPASS' Related Parties as additional insureds, with per-occurrence limits of not less than One Million Dollars (\$1,000,000.00) and an additional One Million Dollar (\$1,000,000) umbrella policy.
- (iii) Commercial Comprehensive Automobile Liability which (a) includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles and (b) names COMPASS and COMPASS' Related Parties as additional insureds, with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit and a One Million Dollar (\$1,000,000) umbrella policy.
- (iv) Professional Liability coverage, including contractual liability, with limits of not less than the following:  
(Name of CONTRACTOR) \_\_\_\_\_ - One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) aggregate.

With regard to all subcontractors, CONTRACTOR agrees to insure the work of such subcontractors not otherwise providing Professional Liability Coverage, including contractual liability, to COMPASS in the amounts stated in this Article.

## ARTICLE 6

### PERSONNEL AND CONSULTANT CHARTS

- 6.1 The CONTRACTOR shall prepare and attach as Appendix B to this Agreement the CONTRACTOR's Personnel Chart which lists by name, job category and responsibility the CONTRACTOR's primary employees who will work on the Project. The CONTRACTOR shall promptly inform COMPASS in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). COMPASS shall have the right to reject any proposed replacement.
- 6.2 The CONTRACTOR shall (i) prepare and attach as Appendix C to this Agreement the CONTRACTOR's Consultants Chart which lists by name and general duties

each consultant retained by the CONTRACTOR who will provide services with respect to the Project and the names of key team members in each Consultant's firm who will be performing services on behalf of the Consultant; (ii) shall not enter into any agreement with any consultant to which COMPASS raises a timely objection; and, (iii) promptly inform COMPASS in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). COMPASS shall have the right to reject any proposed replacement.

6.3 If applicable, COMPASS shall provide and attach as Appendix D to this Agreement COMPASS' Consultants Chart which lists by name and general duties each consultant retained by COMPASS who will provide services with respect to the Project. At any time during the term of this Agreement, COMPASS reserves the right to engage any other consultants which COMPASS deems necessary or desirable for the Project, and, at its sole discretion, to remove any such Consultant from the Project.

Community Planning Association  
of Southwest Idaho  
("COMPASS")

\_\_\_\_\_  
\_\_\_\_\_  
("CONTRACTOR")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Information Only

## APPENDIX A

### CONTRACTOR'S PAYMENT SCHEDULE AND BILLABLE RATES

- A. SCHEDULE FOR PAYMENT OF THE PROFESSIONAL CONTRACT PRICE ON A NOT-TO-EXCEED BASIS

Progress payments monthly/on completed milestones – invoices need to be submitted by the last of the month for payment the following month.

- B. HOURLY RATES PER STAFF MEMBER AND/OR TYPE OF WORK

- C. Contractor agrees that Contractors' staff, personnel, consultants or subcontractors listed in Appendix B and Appendix C of this Chapter shall not spend billable time under this Agreement without written authorization from COMPASS.

Information Only

**APPENDIX B**

**CONTRACTOR'S PERSONNEL CHART**

**See Attached**

Information Only

**APPENDIX C**

**CONTRACTOR'S CONSULTANTS CHART**

See Attached

Information Only

**APPENDIX D**

**COMPASS' CONSULTANTS CHART**

**COUNSEL FOR COMPASS**

Information Only

**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN COMMUNITY PLANNING  
ASSOCIATION  
OF SOUTHWEST IDAHO  
AND**

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***CHAPTER 2***

**CONTRACTOR'S REQUIRED SERVICES**

**Dated:** \_\_\_\_\_

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**RFQ/RFP/SCOPE OF WORK**

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CONTRACT FOR PROFESSIONAL SERVICES  
CHAPTER 2

CONTRACTOR'S REQUIRED SERVICES

**ARTICLE 1**

**PROJECT SCOPE OF WORK**

- 1.1 Essential Services:** The detailed Project Scope of Work (Appendix E) contains the essential services to be performed by CONTRACTOR. CONTRACTOR agrees to provide all professional services as set forth in the Project Scope of Work and as may be modified under the terms of this agreement.
- 1.2 Project Schedule and Professional Coordination Services:**
- 1.2.1 The CONTRACTOR shall be responsible for coordinating with COMPASS and shall be required to keep the Project on schedule by coordinating the work. CONTRACTOR shall maintain regular communication with COMPASS to assist COMPASS in evaluating the overall progress of the Project and amounts invoiced for work performed. CONTRACTOR, including any other necessary staff or consultants, will meet with COMPASS staff at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans and changes to the Project. CONTRACTOR shall provide any additional information, reports or documentation requested by COMPASS.
- 1.2.2 CONTRACTOR shall provide a final report to COMPASS upon completion of the Project Scope of Work.
- 1.2.3 The Project Scope of Work also includes the project completion date and any guidelines and milestone dates required by COMPASS. COMPASS does not assume any of the CONTRACTOR's responsibility for coordination and timely compliance with the Project Schedule, or for orderly and timely completion of the Project by the required date of Final Completion.
- 1.2.4 The CONTRACTOR shall determine and promptly notify COMPASS in writing when it believes adjustments to the Project Scope of Work are necessary, but no such adjustments shall be effective unless approved in writing by COMPASS.
- 1.3 Investigation and Analysis:** CONTRACTOR shall investigate and gather any and all information necessary for a thorough understanding and successful and professional completion of the Project. This may include, but is not limited to the following: (i) visit the COMPASS office to discuss the project and desired outcomes with COMPASS staff and officials; (ii) visit any specific sites or locations in the area as necessary; (ii) familiarize itself with the Treasure Valley area, its transportation system, topography, growth and development patterns,

political entities and boundaries and any other physical or technical aspects of the area necessary for the successful and professional completion of the Project.

**1.4 RFP/RFQ:** The RFP/RFQ issued by COMPASS, including any amendments, and the Response(s) by CONTRACTOR thereto shall be included and Attached to the Project Scope of Work (Appendix E) and are incorporated by reference into this agreement.

Community Planning Association  
of Southwest Idaho  
("COMPASS")

\_\_\_\_\_  
\_\_\_\_\_  
("CONTRACTOR")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Information Only

**APPENDIX E**

**RFQ/RFP/PROJECT SCOPE OF WORK**

Information Only

**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN COMMUNITY PLANNING  
ASSOCIATION  
OF SOUTHWEST IDAHO  
AND**

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**CHAPTER 3  
GENERAL TERMS AND CONDITIONS**

**Dated:** \_\_\_\_\_

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**CONTRACT FOR PROFESSIONAL SERVICES**  
CHAPTER 3  
**GENERAL TERMS AND CONDITIONS**

**ARTICLE 1**

**CONTRACTOR'S GENERAL RESPONSIBILITIES**

**1.1 CONTRACTOR's Services**

- 1.1.1 The CONTRACTOR's services consist of those services performed by the CONTRACTOR, the CONTRACTOR's employees, and the CONTRACTOR's consultants and sub-contractors.
- 1.1.2 The CONTRACTOR, as professional advisor, service provider and consultant to COMPASS for the Project, accepts and acknowledges the relationship of trust and confidence established with COMPASS and covenants to furnish professional services to COMPASS in an expeditious, economical and proper manner consistent with COMPASS' interests and objectives.
- 1.1.3 The CONTRACTOR shall determine and promptly notify COMPASS in writing when extra services outside the Project Scope of Work are necessary or desirable in connection with the Project. CONTRACTOR shall not perform such extra services except in accordance with Para. 3.2 and 3.4 of Chapter 1 of this Agreement.

**1.2 CONTRACTOR's Performance of Services**

- 1.2.1 The CONTRACTOR understands and acknowledges that time is of the essence in completion of the Project and COMPASS will incur damages if the Project is not completed on time. The CONTRACTOR shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project Design Schedule and in accordance with all applicable schedules.
- 1.2.2 The CONTRACTOR shall not, without the express written permission of COMPASS, (i) engage or recommend to COMPASS engagement of any consultant, trade contractor, subcontractor or supplier to provide services on behalf of the CONTRACTOR, Owner or Project in which the CONTRACTOR has a direct or indirect proprietary or other pecuniary interest; or (ii) call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the CONTRACTOR or in which any consultant, trade contractor, subcontractor, or supplier of the CONTRACTOR has a direct or indirect proprietary or other pecuniary interest.

1.2.3 COMPASS understands and acknowledges that all of the CONTRACTOR's services and work product performed or prepared under this Agreement, including, without limitation, all designs, site visits, programming, modeling, forecasting, planning, presentations, reviews and approvals, will be performed or prepared to the Professional Standard of Care, meaning with such reasonable care, technical skill, ability and diligence as services are ordinarily and customarily performed by similar professionals for projects of similar scope and nature.

### **1.3 CONTRACTOR's Duties**

- 1.3.1 The CONTRACTOR shall cooperate and communicate with COMPASS, Project Coordinator and all other persons or entities required for satisfactory completion of the Project.
- 1.3.2 When requested to do so by COMPASS, the CONTRACTOR shall provide other reasonably required drawings, graphs, charts, models, designs, summaries, and information deemed necessary by COMPASS.
- 1.3.3 The CONTRACTOR shall perform all services and prepare all documents in accordance with COMPASS requirements. All information, documents, reports, programs or other deliverables or requested items shall be in formats or programs that are compatible with COMPASS formats or programs.
- 1.3.4 The CONTRACTOR shall provide Project related documents and information to COMPASS for review in accordance with schedule requirements and with sufficient lead time to allow reasonable time for review.
- 1.3.5 The CONTRACTOR shall immediately make additions, changes and corrections to any documents, information, data, models or programs prepared by the CONTRACTOR necessitated by errors and omissions in the CONTRACTOR's performance of its services.
- 1.3.6 CONTRACTOR shall not use the services (in whole or in part) of any person or entity who is elected to public office in any government entity in, from or representing residents of Ada or Canyon counties; or a person who is an employee (whether full time or less than full time) of any government entity located in whole or in part in Ada or Canyon counties. Failure to comply with the provisions of this paragraph will be cause for termination of this Agreement
- 1.3.7 Disadvantaged Business Enterprise (DBE) Status: As a recipient of Federal funding, COMPASS is required to seek qualified, certified DBE firms from the certified Idaho Transportation Department list for contracting and purchasing opportunities. Should the CONTRACTOR claim such DBE status, as defined under Federal regulations, the CONTRACTOR agrees to furnish written evidence of DBE certification from a governmental entity prior to commencing work on the Project. Should sub-agreements with other parties be required to fulfill the Project Scope of Work described in Exhibit E of Chapter 2, the CONTRACTOR agrees to notify COMPASS of these contract opportunities and to seek qualified DBE firms from the published and certified Idaho Transportation Department list (available from COMPASS) to perform the work. The CONTRACTOR will notify

COMPASS of the dollar value of the sub-agreement and the DBE status of any subcontractor or service provider. When DBE status is claimed for these subcontractors or service providers, the CONTRACTOR shall provide COMPASS of written proof of DBE certification. In order to comply with the required "Prompt Payment" clause addressed in 49 CFR 26.29, COMPASS may require CONTRACTOR to provide payment history and retainage agreements of subcontractor(s), submitted as part of this Professional Service Agreement.

#### **1.4 CONTRACTOR's Personnel and Consultants**

- 1.4.1 All services rendered by the CONTRACTOR for the Project shall be performed by or under the immediate supervision of experienced professional(s) possessing expertise in the discipline of the service being rendered and any requisite licensure. If, in accordance with the terms of this Agreement, the CONTRACTOR chooses to subcontract or affiliate with another professional entity or organization for all or any portion of the CONTRACTOR's scope of services, the CONTRACTOR shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The CONTRACTOR shall furnish professional services in accordance with the professional standards currently practiced by professional firms on projects similar in size, complexity and cost to the Project.
- 1.4.2 Contractor acknowledges and agrees that COMPASS' selection of the Contractor and initiation of this Agreement is based on the special qualifications of Contractor's key personnel (Chapter 1, Appendix B) as also identified in Contractor's response to the Request for Qualifications/Proposals. Contractor's key personnel shall not delegate performance of the management powers and responsibilities that are required to provide under this Agreement to other personnel without first obtaining the written consent of COMPASS. Further, Contractor shall not re-assign or transfer the key personnel to other duties or positions such that key personnel are no longer available to provide COMPASS with their expertise, experience, judgment, and personal attention without first obtaining COMPASS' prior written consent to such re-assignment or transfer. In the event that the Contractor requests that COMPASS approve a re-assignment or transfer of the key personnel, COMPASS shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the key personnel.
- 1.4.3 The Contractor will make every effort consistent with sound business practices to honor the specific requests of COMPASS with regard to assignment of its employees; however, subject to the limitations in Paragraph 1.4.2 above, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- 1.4.4 In recognition of the fact that Contractor personnel providing services under this Agreement may perform similar services from time to time for others, this Agreement shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to COMPASS under this

Agreement, providing that such use does not conflict with the performance of services under this Agreement.

- 1.4.5 The CONTRACTOR shall retain and compensate any consultant(s) required in connection with the CONTRACTOR's performance of Required Services. The obligations of the CONTRACTOR's consultant(s) shall inure to the benefit of COMPASS. The CONTRACTOR's agreements with its consultant(s) shall require that in the event of default under, or termination of, this Contract For Professional Services, and upon request of COMPASS, the CONTRACTOR's consultant(s) will perform services for COMPASS.
- 1.4.6 The CONTRACTOR shall be responsible for all services performed by the CONTRACTOR's consultant(s) and shall assure that the work of its consultants complies with all the requirements of this Contract For Professional Services. Fees for the CONTRACTOR's consultant(s) are included in the Professional Contract Price.
- 1.4.7 The CONTRACTOR shall name a representative (the "CONTRACTOR's Representative") to serve as COMPASS' primary communication contact with the CONTRACTOR.

## **1.5 CONTRACTOR's Records**

- 1.5.1 The CONTRACTOR shall, concurrently with performance of its services, prepare substantiating records regarding services rendered.
- 1.5.2 The CONTRACTOR shall for all services performed in connection with this Contract For Professional Services, retain in its records copies of all written communications, and any memoranda of verbal communications, related to the Project.
- 1.5.3 Unless otherwise provided, the CONTRACTOR shall maintain substantiating records for six (6) years after the Project date of Final Completion or for any longer period of time as may be required by law. If the CONTRACTOR receives notification of a dispute or the commencement of litigation regarding the Project within this six (6) year period, the CONTRACTOR shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 1.5.4 Upon seven (7) calendar days' written notice, from the date of this Contract For Professional Services to the latest date described in subparagraph 1.5.3, the CONTRACTOR shall make its records available during normal business hours to COMPASS or its authorized representative(s). COMPASS and its authorized representative(s) shall be entitled to inspect, examine, review and copy the CONTRACTOR's records at COMPASS' reasonable expense, within adequate work space at the CONTRACTOR's facilities. Failure by the CONTRACTOR to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by COMPASS to the CONTRACTOR pursuant to this Contract For Professional Services.

**1.6 Claim and Incident Reporting**

- 1.6.1 The CONTRACTOR shall immediately notify COMPASS both orally and in writing of the details of all incidents of which it becomes aware which adversely affect or have the potential to adversely affect the quality or progress of the Project including, but not limited to, union jurisdictional disputes, accidents, loss of data or information, damage to Project materials or and similar significant occurrences.
- 1.6.2 The CONTRACTOR shall immediately notify COMPASS both orally and in writing of any claim of which it becomes aware made by anyone against COMPASS, the CONTRACTOR, or any consultant, subcontractor, or supplier or any others with respect to the Project.

**1.7 Changes to the Contract**

- 1.7.1 The CONTRACTOR understands and agrees that the Contract For Professional Services cannot be changed except as provided herein.
- 1.7.2 No act, omission or course of dealing by the parties shall alter the requirement that modifications of the Contract For Professional Services can be accomplished only by written documents signed by the parties.
- 1.7.3 If the CONTRACTOR disputes a decision (i) that a change has occurred in its scope of services; (ii) whether a change in its scope of services will result in adjustment of its compensation or applicable schedules; or (iii) the amount of any adjustment of compensation or applicable schedules, the CONTRACTOR shall nevertheless continue to provide its services. However, by doing so, the CONTRACTOR will not prejudice any claim that it may have with respect to that decision.

**ARTICLE 2**

**COMPASS' RESPONSIBILITIES**

**2.1 Information**

- 2.1.1 COMPASS shall provide the CONTRACTOR with information reasonably necessary to assist the CONTRACTOR in performing its services.
- 2.1.2 COMPASS shall provide the CONTRACTOR with COMPASS' pertinent Project dates and desired key milestone dates.
- 2.1.3 The furnishing of information by COMPASS to the CONTRACTOR shall not relieve the CONTRACTOR of the responsibility to evaluate the information provided by COMPASS and to notify COMPASS in writing of any additional information needed or services required from COMPASS in order for the

CONTRACTOR to perform its services. Any information and tangible material provided by COMPASS to the CONTRACTOR is furnished to the CONTRACTOR only in order to make complete disclosure of such material in the possession of COMPASS and for no other purpose. By furnishing such material, COMPASS does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, and shall have no liability therefore.

## **2.2 COMPASS' General Duties**

2.2.1 COMPASS shall timely compensate the CONTRACTOR in accordance with the Contract for Professional Services.

2.2.2 COMPASS shall review submissions of documents, data and information prepared by the CONTRACTOR in a timely manner and in accordance with schedule requirements. Review by COMPASS shall be solely for the purpose of determining whether such submissions are generally consistent with COMPASS' intent. No review of such documents, data and information shall relieve the CONTRACTOR of any of its responsibilities.

## **2.3 COMPASS' Representative**

2.3.1 COMPASS shall name COMPASS' Representative or Project Coordinator to serve as the CONTRACTOR's primary communication contact with COMPASS. This person may be the same as the Project Coordinator.

# **ARTICLE 3**

## **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**3.1 Nature And Use of Information:** All information, documents, data, programs, models and electronic media furnished by COMPASS to the CONTRACTOR (i) belong to COMPASS; (ii) are proprietary and confidential; (iii) are furnished solely for use on COMPASS' Project; (iv) shall be kept confidential by the CONTRACTOR; and, (v) shall not be used by the CONTRACTOR on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to COMPASS hereunder is specifically authorized in writing by COMPASS in advance.

**3.2 Ownership of Information:** The documents, information, data, programs, models, electronic media and any other deliverables or work product prepared by or on behalf of the CONTRACTOR for the Project are the joint property of COMPASS and of the CONTRACTOR, and COMPASS may use the documents free of any retention rights of the CONTRACTOR. The CONTRACTOR hereby grants to COMPASS an unconditional right to use, for any purpose whatsoever, the

documents, information, data, programs, models, electronic media and any other deliverables or work product prepared by or on behalf of the CONTRACTOR for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

**3.3 Disclosure of Information:** The CONTRACTOR shall not disclose any information it receives from COMPASS to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Professional Services or as otherwise required by law or in defense of any legal claim. No news release, public announcement, denial or confirmation of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written consent of COMPASS. The restrictions of this paragraph shall continue in effect until completion or termination of this Agreement or for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized. Failure to comply with the provisions of this paragraph may be cause for termination of this Agreement

**3.4 Instructions To Employees:** Because it is difficult to separate proprietary and confidential information from that which is not, the CONTRACTOR shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

**3.5 Non-Publication:** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of COMPASS' common law copyrights or other reserved rights.

**3.6 Idaho Open Records**

- (i) All documents and information received, created or otherwise in COMPASS' possession are subject to the Idaho Open Records Act found in Chapter 3, Title 9 of the Idaho Code (the "Act.") Under the Act records are public documents and open to public inspection and copying unless specifically exempted from disclosure. An exemption is available to protect trade secrets from public disclosure. The documents and information CONTRACTOR receives, creates or possesses in the performance of its obligations under this agreement may or may not be trade secrets as that term is used in the Act. Other exemptions from disclosure also may apply, depending on the circumstances.

- (ii) COMPASS will keep the above described documents and information segregated from other records and shall treat it as confidential and proprietary. If COMPASS receives a request for inspection or copying of the Information, the Act requires COMPASS to grant or deny the request within three working days. COMPASS will give Contractor such oral or written notice of the request as is reasonable under the circumstances. If Contractor believes the information to be exempt from disclosure, in whole or in part, it shall immediately inform COMPASS. If, in the reasonable exercise of its discretion COMPASS agrees, COMPASS shall deny the request. Otherwise, the information may be released for inspection and copying. COMPASS may, in the exercise of its sole discretion, condition a denial of the request for inspection and copying on the indemnification of COMPASS by Contractor for all costs and expenses which may be associated with the denial (including damages, reasonable attorneys fees and other costs associated with the denial) in a form and amount determined by COMPASS in the exercise of its sole discretion.

## **ARTICLE 4**

### **APPLICABLE LAW AND DISPUTE RESOLUTION**

- 4.1 Applicable State Law:** This Contract for Professional Services shall be deemed to be entered into in and shall be interpreted under the laws of the state of Idaho.
- 4.2 Court Actions:** Except as expressly prohibited by law:
  - (i) all legal actions hereunder shall be conducted only in an Idaho state court or Idaho federal district court having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
  - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
  - (iii) the parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and,
  - (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 4.3 Mutual Discussion:** In case of any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For

Professional Services or the breach thereof, the parties shall first attempt resolution through mutual discussion.

- 4.4 Non-binding Mediation:** Any dispute arising under the terms of this Agreement which is not resolved within a reasonable period of time by authorized representatives of the Contractor and COMPASS shall be brought to the attention of the Chief Executive Officer (or designated representative) of the Contractor and the Executive Director (or designee) of COMPASS for joint discussion. At the request of either party, a forum for discussion of the disputed item(s) shall be through a mediator selected by agreement of the parties to assist in the resolution by providing advice to both parties regarding COMPASS contracting policies and procedures. The recommendation(s) of the mediator are not binding upon either party. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity which do not conflict with this Agreement.
- 4.5 Continuation of Work:** Despite an unresolved dispute, the Contractor shall continue without delay to perform its responsibilities under this Agreement. The Contractor shall keep accurate records of its services in order to adequately document the extent of its services under this Agreement.
- 4.6 Conflicting Dispute Resolution Provisions:** Neither party to this Contract For Professional Services shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 4.7 Arbitration Preclusion:** In case of a dispute relating to the Project, or arising out of this Contract for Professional Services, no party to this Contract For Professional Services shall be required to participate in or be bound by, any arbitration proceedings.

## ARTICLE 5

### TERMINATION OR SUSPENSION OF CONTRACT

- 5.1 CONTRACTOR's Default:** If the CONTRACTOR defaults by failing to substantially perform, in accordance with the terms of this Contract For Professional Services, as reasonably and solely determined by COMPASS, COMPASS may give written notice to the CONTRACTOR (i) terminating this Contract For Professional Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONTRACTOR cure within ten (10) calendar days from the date of notice. If the CONTRACTOR fails to cure per the request of COMPASS, COMPASS may give notice to the CONTRACTOR of immediate termination. If COMPASS terminates this Contract For Professional Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the

CONTRACTOR was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 5.3

**5.2 COMPASS' Default:** If COMPASS defaults by failing to substantially perform in accordance with the terms of this Contract For Professional Services, the CONTRACTOR shall give written notice to COMPASS setting forth the nature of the default and requesting cure within ten (10) calendar days from the date of notice. If COMPASS fails to cure within ten (10) calendar days from the date of notice, the CONTRACTOR may give notice to COMPASS of immediate termination.

**5.3 Termination or Suspension for Convenience:** COMPASS may at any time give written notice to the CONTRACTOR terminating this Contract For Professional Services or suspending the Project, in whole or in part, for COMPASS' convenience and without cause. If COMPASS terminates this Contract For Professional Services or suspends the Project, the CONTRACTOR shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

**5.4 Non-Appropriation:** If sufficient funds are not provided from applicable Federal, state, local or other sources to permit COMPASS in the exercise of its reasonable administrative discretion to continue this contract, or if COMPASS or the program for which this contract was executed is abolished, COMPASS may terminate this contract without further liability by giving Contractor not less than ten (10) calendar days written notice.

**5.5 Payment in Case of Termination**

5.5.1 If the Contract for Professional Services is terminated by COMPASS pursuant to Paragraph 5.1, no further payment shall be made to the CONTRACTOR until completion of the Project. At such time, the CONTRACTOR's compensation shall, at COMPASS' option, be calculated (i) subject to the last sentence of this subparagraph, on the basis of services actually performed and expenses actually incurred prior to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the CONTRACTOR's compensation shall be reduced by all costs and damages incurred by COMPASS as a result of the default of the CONTRACTOR.

5.4.2 If the Contract For Professional Services is (i) terminated by the CONTRACTOR pursuant to Paragraph 5.2; (ii) terminated by COMPASS pursuant to Paragraph 5.3; (iii) suspended more than three (3) months by COMPASS pursuant to 5.3, or (iv) terminated pursuant to Paragraph 5.4, the CONTRACTOR's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with termination or suspension.

## ARTICLE 6

### MISCELLANEOUS PROVISIONS

- 6.1 Integration:** The Contract for Professional Services represent the entire and integrated agreement between COMPASS and the CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Contract for Professional Services may be amended only by written instruments signed by both COMPASS and the CONTRACTOR, and is subject to such reasonable modifications as may be required by COMPASS' grant provider(s), lender(s) or insurer(s), subject to CONTRACTOR's approval which shall not be unreasonably withheld.
- 6.2 Severability:** If any provision of the Contract for Professional Services, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Contract for Professional Services shall remain valid and enforceable.
- 6.3 Waiver:** No provision of this Contract for Professional Services may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Professional Services.
- 6.4 Strict Compliance:** No failure of COMPASS to insist upon compliance by the CONTRACTOR with any provision of this Contract for Professional Services shall operate to release, discharge, modify, change or affect any of the CONTRACTOR's obligations.
- 6.5 Third-Party Beneficiaries:** This Contract For Professional Services shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as provided in Subparagraph. 1.4.2, nothing contained in this Contract For Professional Services is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either COMPASS or the CONTRACTOR.
- 6.6 Survival:** All provisions of this Contract For Professional Services which contain continuing obligations shall survive its expiration or termination.
- 6.7 Assignment:** Neither party shall assign any or all of its benefits or executory obligations under this Contract For Professional Services without the approval of the other party to this Contract For Professional Services, except in case of assignment solely for security or assignment by COMPASS to a Related Party of COMPASS. COMPASS and the CONTRACTOR bind their successors and assigns to the other party to this Contract For Professional Services.
- 6.8 Independent Contractor:** CONTRACTOR and any consultants or sub-contractors retained by CONTRACTOR shall at all times and for all purposes under this Agreement be considered independent contractors. CONTRACTOR and any

consultants or sub-contractors retained by CONTRACTOR are not employees of COMPASS. They are not entitled employee benefits nor do they operate under the direct supervision and control of COMPASS, but are required to utilize independent judgment and professional skills under the parameters of this agreement.

- 6.9 No Authorization as Agents:** Neither COMPASS or CONTRACTOR are authorized or empowered to act as an agent for the other for any purpose. Neither party can make any representations, warranties, guarantees or incur any obligation or liability on behalf of the other party.

## ARTICLE 7

### DAMAGES AND REMEDIES

- 7.1 Services, Reimbursement And Deductions:** If the CONTRACTOR fails to perform its duties the CONTRACTOR shall, without compensation by COMPASS, provide and process necessary documents and information, and provide other services, required as a result of the CONTRACTOR's failure to perform; and shall promptly reimburse COMPASS for any costs or damages incurred by COMPASS. COMPASS shall also have the right to deduct from payments to the CONTRACTOR any costs or damages incurred, or which may be incurred, by COMPASS as a result of the CONTRACTOR's failure to perform.
- 7.2 General Indemnity:** To the fullest extent permitted by law, the CONTRACTOR shall defend, protect, hold harmless, and indemnify COMPASS, including but not limited to, member agencies, entities, political subdivisions, individuals, elected officials, appointed officials, and employees, from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against COMPASS or the above noted COMPASS' Related Parties allegedly or actually arising out of or resulting from or in any way connected to the CONTRACTOR's provision of services pursuant to this agreement.
- 7.2.1** To the fullest extent permitted by law, the CONTRACTOR, for itself and for its consultants, subcontractors and suppliers, if any, and their agents, employees and servants, expressly waives any and all immunity or damage limitation provisions available to them under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by COMPASS or COMPASS' Related Parties pursuant to the indemnification provision contained in Paragraph 7.2.

- 7.3 Intellectual Property Indemnity:** To the fullest extent permitted by law, the CONTRACTOR shall defend, protect, hold harmless, and indemnify COMPASS and COMPASS' Related Parties, including but not limited to, member agencies, entities, political subdivisions, individuals, elected officials, appointed officials, and employees, from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by COMPASS in writing. If the CONTRACTOR has reason to believe the use of a required design, process or product is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless such information is promptly given to COMPASS.
- 7.4 Non-Exclusivity of Remedies:** The selection of one or more remedies for breach of this Contract For Professional Services shall not limit the right to invoke any other remedy available to the Parties under this Contract For Professional Services or by law.
- 7.5 Waiver of Damages:** The CONTRACTOR shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 7.6 Interest:** COMPASS is entitled to interest on all amounts due from the CONTRACTOR that remain unpaid thirty (30) calendar days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Article 8 below.
- 7.7 Attorney's Fees:** If either party files an action which arises out of any portion of this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs corresponding to said action.

## ARTICLE 8

### PAYMENT TO CONTRACTOR

- 8.1 General Invoicing Requirements:** Every thirty (30) calendar days during the term of this Contract For Professional Services, and subject the Project Design and Compensation Schedules, the CONTRACTOR shall submit invoices to COMPASS requesting payment for appropriate services rendered under this agreement.. Each invoice shall contain COMPASS' Project identification, bear the signature of the CONTRACTOR and have attached such documentation as may be required by COMPASS. All invoices will reference corresponding task numbers

established in the Project Scope of Work and will include the Professional Service Agreement number. The final invoice shall be marked as such.

- 8.1.1 The invoice shall generally itemize or show a breakdown of the various phases or parts of the Professional Contract Price, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice.
- 8.1.2 The invoice shall also include a certification signed by the CONTRACTOR stating that the CONTRACTOR has paid its consultants, subcontractors and suppliers their proportional share of all previous payments received from COMPASS.
- 8.1.3 Unless otherwise expressly noted, the signature of the CONTRACTOR on any invoice shall constitute the CONTRACTOR's certification to COMPASS that (i) the CONTRACTOR has billed COMPASS for all services rendered by it and any of the CONTRACTOR's Consultants and subcontractors through the date of the invoice; (ii) as of the date of the invoice, no other outstanding amounts are due from COMPASS to the CONTRACTOR for services rendered; (iii) the services listed in the invoice have progressed to the level indicated and have been performed as required by the Contract Documents; (iv) that the reimbursable expenses have been reasonably incurred; and, (v) that the amount requested is currently due and owing.
- 8.1.4 By acceptance of COMPASS' payment of an invoiced amount, the CONTRACTOR releases COMPASS from any and all claims by the CONTRACTOR and by CONTRACTOR's Consultants and subcontractors for Work performed but not invoiced during the period for which payment was received.

## **8.2 Invoicing Pursuant To Compensation Schedule and Invoicing for Payment of a Fixed Fee**

- 8.2.1 With respect to requests for payment of the Professional Contract Price pursuant to a not-to-exceed fee or for requests for payment of the Professional Contract Price in a series of amounts in accordance with a Compensation Schedule, the invoice shall, in addition to the invoice requirements contained in Paragraph 8.1 above, at a minimum:
  - (i) state the total fee and expenses amount;
  - (ii) state the amount due pursuant to the Compensation Schedule; and
  - (iii) be in conformance with Chapter 1, Article 3 of this Agreement.

## **8.3 Invoicing For Compensation for Services Rendered On An Hourly Basis**

- 8.3.1 With respect to requests for payment of all or any portion of the Professional Contract Price or payment of services on an hourly basis, the invoice shall, in addition to the invoice requirements contained in Paragraph 8.1 above, at a minimum:

- (i) describe with reasonable particularity the type and nature of each service rendered;
- (ii) state the date each service was rendered;
- (iii) identify the technical classification and name of each person rendering each service;
- (iv) state the hours expended by each class of persons for each service;
- (v) state the hourly rate for each classification of service; and,
- (vi) state the total amount charged for each service.

**8.4 Invoicing And Payment Of Expenses:** Invoices for expenses shall, in addition to the invoice requirements contained in Paragraph 8.1 above, be accompanied by such documentation or support data as COMPASS may require. The CONTRACTOR shall:

- (i) be reimbursed only for the following expenses:
  - (a) travel expenses approved in advance by COMPASS in writing;
  - (b) telephone, facsimile, telecopier, postage/express mail charges, and similar communications charges;
  - (c) reproduction and copying expenses, for items in excess of those included in Required Services; and,
  - (d) items approved in advance by COMPASS in writing.
- (ii) set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and,
- (iii) bill expenses at actual cost or prevailing rate and without addition of administrative charge, multiple or surcharge.

**8.5 Time For Payment:** Unless there is a dispute about the compensation due the CONTRACTOR including, but not limited to, claims by COMPASS against the CONTRACTOR, within thirty (30) calendar days after receipt by COMPASS of the CONTRACTOR's invoice, COMPASS shall pay to the CONTRACTOR the amount approved. The date on which payment is due shall be referred to as the "Payment Date". In the event of disputes, payment shall be made on or before the Payment Date for amounts and services not in dispute, subject to any setoffs claimed by COMPASS. Payments shall be deemed timely if postmarked at least two (2) business days before the Payment Date.

- 8.6 Correction Of Past Payments:** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, COMPASS shall notify the CONTRACTOR in writing of such defect or impropriety within twenty (20) days of the receipt of the disputed invoice. Any disputed amounts determined by COMPASS to be payable to the CONTRACTOR shall be due thirty (30) calendar days from the date the dispute is resolved.
- 8.7 Interest On Outstanding Amounts Due:** No interest shall accrue when payment is delayed because of a dispute between COMPASS and the CONTRACTOR, or a dispute as to the accuracy or completeness of any request for payment received. This shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage, which is withheld to assure performance of the Contract For Professional Services.
- 8.8 Periodic Payments:** COMPASS shall make payments to the CONTRACTOR during each phase of the services based on the value of the services completed by the CONTRACTOR on that phase. Each such payment shall be based on COMPASS' opinion of the value of the services completed as of the date of the invoice. The CONTRACTOR may invoice COMPASS when the submittal for the particular design phase is complete. COMPASS shall make payment of a cumulative amount of not more than 90% of the value of that phase. The CONTRACTOR may invoice COMPASS for the remaining 10% (balance of the value of that phase) when the submittal has been reviewed and approved.

## ARTICLE 9

### GENERAL INSURANCE REQUIREMENTS

- 9.1 General Insurance Requirements:** Unless otherwise required, each insurance policy except the CONTRACTOR's professional liability policy:
- (i) shall be issued by an insurance carrier acceptable to Owner;
  - (ii) shall be kept in force throughout performance of the CONTRACTOR's services and for one (1) year after the end of such performance;
  - (iii) shall be an occurrence policy; and,
  - (iv) shall be evidenced by a certificate of insurance acceptable to COMPASS which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight (28) days' prior written notice to COMPASS.
- 9.2 Professional Liability Insurance Requirements:** The CONTRACTOR's professional liability policy:

- (i) shall be issued by an insurance carrier acceptable to Owner;
- (ii) shall be kept in force throughout performance of the CONTRACTOR's services and for three (3) years after the end of such performance;
- (iii) may be a claims-made policy; and,
- (iv) shall be evidenced by a certificate of insurance acceptable to COMPASS which provides that the coverage evidenced thereby shall not be substantially modified, by endorsement, or canceled without twenty-eight (28) days' prior written notice to COMPASS.

If any professional liability is canceled or not renewed, any substitute policy shall have a commencement date retroactive to the date upon which the CONTRACTOR commenced performance of its services under this Contract For Professional Services.

**9.3 Certificates of Insurance:** Prior to execution of this Agreement, or, as otherwise allowed in writing by COMPASS, prior to performance of services on the Project, the CONTRACTOR shall ensure that its required insurance coverage, and that of its consultants is in effect pursuant to this Contract For Professional Services. The CONTRACTOR agrees that COMPASS shall have no responsibility to verify compliance by the CONTRACTOR or its consultants, contractors, subcontractors or suppliers with any insurance requirements. Upon the request of COMPASS, the CONTRACTOR shall deliver to COMPASS certificates of insurance and/or copies of policies for all required insurance coverage.

**9.4 Effect of Insurance:** Compliance with insurance requirements shall not relieve the CONTRACTOR of any responsibility to indemnify COMPASS for any liability to COMPASS as specified in any other provision of this Contract For Professional Services and COMPASS shall be entitled to pursue any remedy in law or equity if the CONTRACTOR fails to comply with the contractual provisions of this Contract For Professional Services. Indemnity obligations specified elsewhere in this Contract For Professional Services shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

**9.5 Priority:** Insurance coverage (including any deductible or self-insured retention) required from persons or entities other than COMPASS or COMPASS' Related Parties shall be deemed primary to any coverage provided by COMPASS or COMPASS' Related Parties.

**9.6 Property Damage Disclaimer:** COMPASS shall not be liable, and shall provide no insurance, for any loss or damage incurred by the CONTRACTOR or its consultants, or by their agents and employees, to any and all tools, machinery, equipment and other property owned, rented or leased by them, regardless of whether such losses are insured by them. The CONTRACTOR hereby releases and discharges COMPASS and its Related Parties of and from all liability to the

CONTRACTOR, and to anyone claiming by, through or under the CONTRACTOR, by subrogation or otherwise, on account of any loss or damage to such tools, machinery, equipment or other property, however caused.

## ARTICLE 10

### DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally-accepted meaning in the construction industry, and third according to its common and customary usage.

- 10.1 Contract For Professional Services:** A written agreement between COMPASS and a CONTRACTOR for provision of services and related items required to design, implement and successfully complete all or part of a Project.
- 10.2 Final Completion:** The stage of the Project when the work has been fully completed and necessary services have been fully performed in accordance with the Agreement for Professional Services and COMPASS has received all documents and items necessary for closeout of the Project.
- 10.3 COMPASS' Related Parties:** Any parent, subsidiary or affiliated entities of COMPASS, including the respective officers, members, trustees, agents, volunteers, office holders, appointed officials, elected officials, directors, and employees of each.
- 10.4 Project:** A planned undertaking as more specifically described in the preceding the recitals in Chapter 1 of a Contract For Professional Services.
- 10.5 Project Schedule:** The timetable which sets forth pertinent dates for timely completion of the Project.
- 10.6 Project Scope of Work:** The detailed outline of all services to be provided for the Project which sets forth the required relationships between, and pertinent dates for, required completion of design, programming, modeling, milestones, planning and other professional services, documents and related activities.

**10.7 Work:** Any and all computers, data, information, drawings, designs, programs, models, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, things, tools, utilities, transportation, and vehicles, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project.

Community Planning Association  
of Southwest Idaho  
("COMPASS")

\_\_\_\_\_  
\_\_\_\_\_  
("CONTRACTOR")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Information Only